146 US 355

# RECORD, CASE No. 14,972.

Circuit Ct of Appeals.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1014.

JAMES F. JOY, TRUSTEE, AND SOLON HUMPHREYS AND DANIEL A. LINDLEY, TRUSTEES, APPELLANTS,

*vs.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED FEBRUARY 6, 1892.

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*a* *Pleas.*

Pleas in the circuit court of the United States for the northern district of Ohio, western division, held at the United States court-rooms, in the city of Toledo, in said district aforesaid, before the Honorable Howell E. Jackson, circuit judge for the sixth circuit, on the tenth day of November, being a day of the June term of said court, in the year of our Lord one thousand eight hundred and ninety-one, and the one hundred and sixteenth year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk.*

1 Record of the proceedings of the circuit court of the United States within and for the northern district of Ohio and the western division thereof, continued and held at the court-rooms, in the city of Toledo, in said district, before the Honorable Howell E. Jackson, circuit judge for the sixth circuit, at the June term thereof, in the year of our Lord one thousand eight hundred and ninety-one, to wit, on the tenth day of November, the same being a day of the June term in said year.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company; James R. Jesup and Isaac H. Knox, as Trustees; George I. Seney, Trustee; John Humphreys and Daniel A. Lindley, as Trustees, Defendants.

Be it remembered that heretofore, to wit, on the 2nd day of December, A. D. 1890, there was filed in the clerk's office of said court the following petition of James F. Joy, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILROAD COMPANY and Others, Defendants.

To the honorable the United States circuit court for the northern district of Ohio, western division:

2 The petition of James F. Joy, of the city of Detroit, State of Michigan, respectfully shows—

That your petitioner is a defendant in this suit, and that the same was brought by the Adelbert College of Western Reserve University on or about the 22nd of November, 1883, in the common pleas court of Lucas county, Ohio.

Your petitioner further respectfully shows that the said plaintiff claims in the petition and in the supplemental and amended petition in this suit as against your petitioner the right to assert a lien upon

certain railway property situated within the States of Ohio and Indiana, upon which are two mortgages, of which your petitioner as trustee is the holder in the sum of $1,000,000 and $1,500,000 respectively, and that said plaintiff, as the owner of two bonds, $500 each, part of a series of bonds to the amount of $600,000, asks to have full inquiry and finding of said court as to any and all liens upon said railway property held by persons or parties not now formally parties in either this cause or in said cause and asks the court to make full adjudication in respect thereto touching both said railway property and the proceeds to arise from the sale of the same, to the end that said railway property when sold shall pass free and clear of all encumbrances to the purchaser thereof.

Petitioners says that as to said mortgage of $1,500,000, of which this defendant is trustee, upon so much of said property as is situated within the State of Indiana there is a controversy between this defendant and the said plaintiff, and that the matters in dispute in this suit therefore exceed the sum of $2,000, exclusive of interest and costs.

Your petitioner further respectfully shows that this suit is brought by the said plaintiff against your petitioner and
3 others, and that the said plaintiff is and was at the time of bringing this suit a corporation organized under the laws of the State of Ohio and is and was a citizen and resident of said State, and that your petitioner is and was at the time of bringing this suit a citizen and resident of the city of Detroit, in the State of Michigan.

Your petitioner further respectfully shows that this cause has not yet been tried, but that the same is pending for trial, and this defendant desires to remove this suit before the trial thereof into the circuit court of the United States for the northern district of Ohio, western division, within which district the said county of Lucas is situated, and he desires to remove the same for the reason that from prejudice or local influence this defendant will not be able to obtain justice in the said State court situated in the county of Lucas or in any other State court to which the said defendant may have the right to remove said cause on account of such prejudice or local influence.

And this defendant states that in the United States circuit court for the district of Indiana a suit was brought by one David J. Tyson and others against E. D. Morgan, deceased, predecessor trustee of this defendant, and other defendants for the purpose of having established a lien on behalf of these same equipment bonds, which said cause, after a decree therein in favor of all of said equipment bondholders, was duly carried to the Supreme Court of the United States, which thereupon declared that said equipment bonds were not entitled to a lien upon said railway property and ordered and directed the circuit court of the United States for the district of Indiana to enter a decree to the effect that said equipment bonds were
not a lien upon the railway property upon which the plaintiff
4 desires to establish a lien in this suit; that subsequent thereto, in a certain suit pending in the supreme court of Ohio upon appeal from the district court of Lucas county upon a decree ren-

dered in the common pleas court of Lucas county, the supreme court of Ohio refused to follow the adjudication of the Supreme Court of the United States, but held, contrary thereto, that the said equipment bonds or such portion of the same as was involved in that litigation was entitled to a lien against the railway property described in the plaintiff's petition in this case.

Your petitioner further says that said common pleas court of Lucas county and all other State courts to which this defendant would have a right to remove said cause on account of prejudice or local influence are bound by the rules of practice and procedure in said State to follow the adjudication of the supreme court of the State of Ohio, and will not follow or be bound by nor regard the decision of the Supreme Court of the United States upon the precise question that is in controversy between this defendant and the plaintiff in this cause.

Your petitioner further shows that he is ready and willing to give a bond, with good and sufficient surety, for his doing all acts and things required to be done by the provisions of the acts of Congress upon the removal of the cause into the circuit court of the United States, and he offers and files herewith his bond, executed by himself and Allen Sheldon, of the city of Detroit, as surety, in the penal sum of $1,000, conditioned that your petitioner shall enter in the next circuit court of the United States to be held in the northern district of Ohio, western division, on the first day of the session of said court, a copy of the record in this suit, and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto, and shall do all such other appropriate acts as by the act of Congress approved August 13, 1888, are required to be done upon the removal of a suit into the United States court, according to the provisions of said law upon the removal of a suit into the United States court.

Your petitioner therefore prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law, and that the said suit may be removed into the next circuit court of the United States to be held in the northern district of Ohio, western division, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had in this court.

DILLON & SWAYNE,
*Attorneys for Petitioner.*

STATE OF MICHIGAN, } ss:
*County of Wayne,* }

James F. Joy, the petitioner in the foregoing petition, being duly sworn, deposes and says he has read the petition subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES F. JOY.

Sworn to before me this 23 day of April, 1890.
[SEAL.] JAMES G. MILLER,
*Notary Public in and for Wayne County, Michigan.*

6 Afterwards, to wit, on the 2d day of December, A. D. 1890, there was filed in the clerk's office of said court the following petition of Solon Humphreys and Daniel A. Lindley, to wit:

In the United States Circuit Court for the Northern District of Ohio, Western Division.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILROAD COMPANY and Others, Defendants.

To the honorable the United States circuit court for the northern district of Ohio, western division:

The petition of Solon Humphreys, of Bergen Point, State of New Jersey, and Daniel A. Lindley, of the city of New York, State of New York, respectfully shows—

That your petitioners are defendants in this suit, and that the same was brought by The Adelbert College of Western Reserve University, plaintiff, on or about the 22nd day of November, A. D. 1883, in the common pleas court of the county of Lucas, in the State of Ohio.

Your petitioners further respectfully show that the said plaintiff claims in the petition in this suit and in the supplemental and amended petition filed therein against your petitioners a lien on behalf of two bonds of the sum of $500 each belonging to said plaintiff of an issue of $600,000 of bonds upon certain railway property upon which these defendants are trustees of a
7 mortgage in the sum of $2,000,000, and that the said plaintiff asks that the court in said cause will make full inquiry and finding as to any and all liens upon said railway property held by persons or parties not now formerly parties in this cause or in the said cause brought by one Compton, and will make full adjudication in respect thereto touching both said railway property and the proceeds to arise from the sale of the same, to the end that said railway property when it shall be sold shall pass free and clear of all incumbrances to the purchaser thereof, and that these defendants dispute the lien of the bonds of the said plaintiff and of all the other bonds of said issue known as equipment bonds, and that the matters in dispute in this suit therefore exceed the sum of $2,000, exclusive of interest and costs.

Your petitioners further respectfully show that this suit is brought by the said plaintiff against your petitioners and others, and that the said plaintiff is and was at the time of bringing this suit a corporation organized under the laws of the State of Ohio and a citi-

zen and resident of said State of Ohio, and that your petitioners are and were at the time of bringing this suit citizens and residents as follows: The said Solon Humphreys a citizen and resident of the State of New Jersey, and the said Daniel A. Lindley a citizen and resident of the State of New York.

And your petitioners further respectfully show that this cause has not yet been tried, but that the same is pending for trial, and these defendants desire to remove this suit before the trial thereof into the circuit court of the United States for the northern district of Ohio, western division, within which district the said county of Lucas is situated, and they desire to remove the same for the
8 reason that from prejudice or local influence these defendants will not be able to obtain justice in the said State court, situated in the county of Lucas, or in any other State court to which the said defendants may have the right to remove said cause, on account of such prejudice or local influence.

And these defendants state that in the United States circuit court for the district of Indiana a suit was brought by one David J. Tyson and others against these defendants for the purpose of having established a lien on behalf of these same equipment bonds; which said cause, after a decree therein in favor of all said equipment bondholders, was duly carried to the Supreme Court of the United States, which thereupon declared that said equipment bonds were not entitled to a lien upon said railway property and ordered and directed the circuit court of the United States for the district of Indiana to enter a decree to the effect that said equipment bonds were not a lien upon the railway property upon which the plaintiff desires to establish a lien in this suit; that subsequent thereto, in a certain suit pending in the supreme court of the State of Ohio upon appeal from the district court of Lucas county upon a decree rendered in the common pleas court of Lucas county, the supreme court of Ohio refused to follow the adjudication of the Supreme Court of the United States, but held, contrary thereto, that the said equipment bonds or such portion of the same as was involved in that litigation was entitled to a lien against the railway property described in the plaintiff's petition in this case.

Your petitioners further say that said common pleas court of Lucas county and all other State courts to which this defendant would have a right to remove said cause on account of prejudice or local influence are bound by the rules of practice and procedure in
9 said State to follow the adjudication of the supreme court of the State of Ohio, and will not follow nor be bound by nor regard the decision of the Supreme Court of the United States upon the precise question that is in the controversy between these defendants and the plaintiff in this cause.

Your petitioners further show that they are ready and willing to give a bond, with good and sufficient surety, for their doings all acts and things required to be done by the provisions of the acts of Congress upon the removal of the cause into the circuit court of the United States, and they offer and file herewith their bond, executed by —— ——, of the city of —, as surety, in the penal sum of $1,000

conditioned that your petitioners shall enter in the next circuit court of the United States to be held in the northern district of Ohio, western division, on the first day of the session of said court, a copy of the record in this suit, and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto, and shall do all such other appropriate acts as by the acts of Congress approved August 13, 1888, are required to be done upon the removal of a suit into the United States court according to the provisions of said law upon the removal of a suit into the United States court.

Your petitioners therefore pray that the said bond may be accepted as good and sufficient surety according to the said provisions of law, and that the said suit may be removed into the next circuit court of the United States to be held in the northern district of Ohio, western division, pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had in said court.

HENRY CRAWFORD,
*Attorney for Petitioners.*

10 STATE OF NEW YORK, } ss:
*City and County of New York,* }

Solon Humphreys, one of the petitioners in the foregoing petition, being duly sworn, deposes and says that he has read the petition subscribed by him and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

SOLON HUMPHREYS.

Subscribed and sworn to before me this 27th day of June, 1890.
[SEAL.] THOMAS E. FELL,
*Notary Public, Kings County, New York Co.*

Certificates filed in New York county.

STATE OF NEW YORK, } ss:
*City and County of New York,* }

Daniel A. Lindley, one of the petitioners in the foregoing petition, being duly sworn, deposes and says that he has read the petition subscribed by him and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and those matters he believes to be true.

D. A. LINDLEY.

Subscribed and sworn to before me this 27th day of June, 1890.
[SEAL.] THOMAS E. FELL,
*Notary Public, Kings County, New York.*

Certificates filed in New York county.

11 Afterwards, to wit, on the 2d day of December, A. D. 1890, there was filed — the clerk's office of said court the following affidavit of Solon Humphreys for removal, to wit:

In the United States Circuit Court for the Northern District of Ohio, Western Division.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.

STATE OF NEW YORK, *City & County of New York*, } *ss:*

Solon Humphreys, being duly sworn, says he is a citizen and resident of the State of New Jersey. Affiant further says that he is a defendant in the above-entitled action as trustee of mortgage given to this affiant and Daniel A. Lindley to secure $2,000,000 of bonds issued by the Wabash Railway Company upon its lines of railway extending from Toledo to St. Louis and with branches to the Mississippi river at Hannibal, Illinois, and in said action is asserting the lien of said mortgage upon the same property against which the plaintiff seeks in this action to assert a lien on behalf of the equipment bonds owned by it; that in this action there is a controversy between the plaintiff and the defendant as to the priority of the lien of the mortgage of which this affiant is trustee and the lien claimed on behalf of the equipment bonds belong-
12 ing to the plaintiff and other equipment bonds belonging to the said issue of $600,000 of equipment bonds. Plaintiff also claims in said action that it is entitled to a prior lien over the lien of the mortgage of which this affiant is trustee on behalf of two bonds owned by it of $500 each, the same being part, however, of a general issue of equipment bonds to the amount of $600,000. The plaintiff also claims to be entitled to have the court make full inquiry and finding as to any and all liens upon the said railway property held by persons or parties not now formal parties in this cause, and to make full adjudication in respect thereto touching both said railway property and the proceeds to arise from the sale of the same, to the end that the said railway property when sold shall be sold free and clear of all encumbrances to the purchaser thereof, meaning thereby, among other liens, a full adjudication in respect of the entire issue of said equipment bonds.

Affiant further says that he is advised by the petition in this cause that the plaintiff is a corporation organized and existing under the laws of the State of Ohio, and is a citizen and resident of said State. Affiant says further that the said Daniel A. Lindley, cotrustee with this affiant, is a resident and citizen of the State of New York. Affiant says further that this cause has never been tried, but is now pending for trial, and that the defendants, this affiant and the said Daniel A. Lindley, desire to remove the same before the trial thereof

into the circuit court of the United States for the northern district of Ohio, western division, for the reason that from prejudice or local influence this defendant will not be able to obtain justice in the common pleas court of the county of Lucas or in any other
13 State court to which this defendant may have the right to remove this cause on account of such prejudice or local influence.

This affiant further states that in the United States circuit court for the district of Indiana in the year 1879 a suit was brought by one David Tyson and others against this defendant and other defendants, the object of said suit being to have the issue of equipment bonds, of which the bonds sued on by the plaintiff form a part, declared a lien upon the property described in the petition in this case, and a decree entered therein in favor of the holders of the entire issue of said bonds. In said suit thus brought the entire issue of said equipment bonds was declared by said circuit court to be entitled to a lien upon said property, and that in default of payment of the said lien by a day named in said decree that the said property should be sold and the proceeds brought into court to be applied in satisfaction of said lien. Upon appeal by the Wabash, St. Louis & Pacific Railway Company from said decree to the Supreme Court of the United States the latter court determined that the said equipment bonds were not entitled to a lien upon the said property, and directed the said United States circuit court to enter a decree to that effect. The affiant states that he is informed as to said proceedings by a copy thereof and by the opinion of the Supreme Court reported in the case of Ham *v.* Wabash, St. Louis and Pacific Railway Company, 114 United States Reports, 587, and makes his allegations upon such information and craves leave to produce such copy in court if required to substantiate the statements of this affidavit. Affiant says further that subsequent to the decision and adjudication of the said cause in the Supreme Court of the United States the suit of one James Compton against The Wabash, St. Louis & Pacific Railway Company *et al.*, being a suit in the State courts of Ohio to
14 establish a lien on behalf of a number of the same issue equipment bonds claimed to be owned by said James Compton, came into the supreme court of Ohio for adjudication and involved the same questions of law as the case previously decided by the Supreme Court of the United States, and the supreme court of Ohio refused to follow the adjudication of the Supreme Court of the United States, but held, in direct contradiction thereof, that the said bonds of James Compton were entitled to a lien, and that in default of payment thereof the said property described in the petition herein should be sold to satisfy the same. Affiant says that his information as to said Compton case is derived from an examination of a copy of the record of said cause in the supreme court of Ohio and of the option of said court as reported in 45 Ohio State Reports, 592, to which affiant craves leave to refer, if required, to substantiate the statements of this affidavit.

Affiant says further that the court in which this cause is pending or any other State court to which this defendant could remove said

cause on account of prejudice or local influence is bound by the rules of practice and procedure in the State of Ohio, as affiant is by counsel advised, to follow the adjudication of the said supreme court of Ohio and will not follow nor regard the decision of the Supreme Court of the United States upon the questions which are in controversy between the plaintiff and the defendant in this case.

SOLON HUMPHREYS.

Sworn to before me this 30th day of June, 1890.

[SEAL.] THOMAS E. FELL,
*Notary Public, Kings County, N. Y.*

Certificate filed in New York county.

15 Afterwards, to wit, on the 2d day of December, A. D. 1890, there was filed in the clerk's office of said court the following bond for removal, to wit:

Know all men by thes presents that we, James F. Joy, as principal, and Allen Sheldon and S. C. Reynolds, as sureties, are jointly and severally held unto the Adelbert College of Western Reserve University in the penal sum of two hundred and fifty dollars ($250); for which, well and truly to be paid unto the said Adelbert College of Western Reserve University, its successors and assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this 28th day of April, 1890.

The condition of this obligation is such that if the said James F. Joy, defendant in a suit now pending in the common pleas court of Lucas county, Ohio, wherein The Adelbert College of Western Reserve University is plaintiff and The Toledo, Wabash & Western Railway Company and others are defendants, shall on the first day of the next session or term of the circuit court of the United States for the northern district of Ohio, western division, enter a copy of the record in said suit and shall enter special bail in said cause, if special bail shall be required, and pay all costs that may be awarded against them by said circuit court, if said court shall hold that said suit was wrongfully or improperly removed from said State court and shall do and perform all the things required in and by the act of Congress passed August 13th, 1888, regarding such removals, then this obligation to be void; otherwise to be and remain in full force and ef-ect.

In testimony whereof witness our hands and seals this 28th day of April, A. D. 1890.

JAMES F. JOY.
ALLEN SHELDON &
S. C. REYNOLDS.

16 Afterwards, to wit, on the 2d day of December, A. D. 1890, there was filed in the clerk's office of said court the following bond for removal, to wit:

Know all men by these presents that we, Solon Humphreys and Daniel A. Lindley, as principals, and S. C. Reynolds and F. J. Rey-

nolds, as sureties, are jointly and severally held unto the Adelbert College of Western Reserve University — the penal sum of two hundred and fifty dollars ($250); for which, well and truly to be paid unto the said Adelbert College of Western Reserve University, its successors and assigns, we bind ourselves, our heirs, executors, and administartors, firmly by these presents.

Sealed with our seals this 17th day of September, 1890.

The condition of this obligation is such that if the said Solon Humphreys and Daniel A. Lindley as trustees, defendants in a suit now pending in the common pleas court of Lucas county, Ohio, wherein The Adelbert College of Western Reserve University is plaintiff and The Toledo, Wabash & Western Railway Company and others are defendants, shall, on the first day of next session or term of the circuit court of the United States for the northern district of Ohio, western division, enter a copy of the record in said suit and shall enter special bail in said cause if special bail shall be required and pay all costs that may be awarded against them by said circuit court if said court shall hold that said suit was wrongfully or improperly removed from said State court, and shall do and perform all the things required in and by the act of Congress passed August 13th, 1888, regarding such removals, then this obligation to be void; otherwise to be and remain in full force and effect.

In testimony whereof witness our hands and seals this 17th
17 day of September, A. D. 1890.

S. C. REYNOLDS.
F. J. REYNOLDS.

Afterwards, to wit, on the 3d day of December, A. D. 1890, there was duly entered on the journal of said court the following order for removal, to wit:

In the United States — for the Northern District of Ohio, Western Division.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILROAD COMPANY and Others, Defendants.
} Order.

It appearing to the court from the petitions filed in this cause and the affidavits thereto attached that, from prejudice or local influence, the petitioners, Solon Humphreys, Daniel A. Lindley, and James F. Joy, will not be able to obtain justice in the court of common pleas of Lucas county, Ohio, or in any other State court to which the said petitioners would or could, under the laws of the State of Ohio, have the right, on account of such prejudice or local influence, to remove this cause, and that they are therefore entitled to have the removal which they seek, it is accordingly—

Ordered that this cause be, and the same is hereby, removed from

the said court of common pleas of Lucas county to this court,
18 and that notice of this order be served upon said court of common pleas of Lucas county, Ohio, and that said court and the clerk thereof be and are requested to furnish, upon application of petitioners and the payment of the lawful fees therefor, a copy of the record on file in said court in this cause to be filed in this court.

Afterwards, to wit, on the 9th day of December, A. D. 1890, there was duly issued to the marshal of said district a certified copy of said order for removal, and on the 12th day of December said copy was returned and filed with the following return made by the marshal, to wit:

NORTHERN DISTRICT OF OHIO, *ss:*

On the 9th day of December, 1890, at Toledo, Ohio, I made due service of this writ by delivering a true and duly certified copy thereof to John P. Bronson, clerk of the court of common pleas of Lucas county, Ohio.

B. F. WADE, *U. S. Marshal,*
By HENRY MORRISON, *Deputy.*

Afterwards, to wit, on the 21st day of January, A. D. 1891, there was filed in the clerk's office of said court the following copy of record from the common pleas court, to wit:

19 Pleas before the court of common pleas within and for the county of Lucas and State of Ohio, at a term thereof *and* begun and held at the court-house, in the city of Toledo, on Monday, the 22nd day of September, in the year of our Lord one thousand eight hundred and ninety.

Present: Honorable Isaac P. Pugsley, Honorable Gilbert Harmon, Honorable Reuben C. Lemmon, presiding judges.

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.* } 22624.

Be it remembered that heretofore, to wit, on the 28th day of April, 1883, plaintiff, by its attorneys, filed in said court a petition in the above-entitled cause; which petition is in the words and figures following, to wit:

*Petition.*

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,

*vs.*

THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company; James R. Jessup and Isaac H. Knox, as Trustees; George I. Seney, Trustee; John Humphreys and David A. Lindley, as Trustees, Defendants.

The plaintiff now comes and for cause of action against the defendant herein says:

That it is a corporation duly incorporated and existing under and pursuant to the laws of the State of Ohio.

That on and prior to the first day of October, 1862, the Toledo and Wabash Railway Company was a corporation duly organized and existing under and pursuant *of* the laws *of the laws* of the
20 States of Ohio and Indiana and owning a line of railway extending from the city of Toledo, in the State of Ohio, and passing through the counties of Lucas, Henry, Fulton, Defiance, and Paulding, in said State, and through the counties of Allen, Huntington, Wabash, Miami, Cass, Carroll, Tippacanoe, Fountain, and Warren, in the State of Indiana, to and terminating at a point in the west line of State Line city, in said last-named county.

That the said Toledo and Wabash Railway Company was itself a consolidated railroad company and was formed by the consolidation of the Toledo and Wabash Railroad Company, a corporation existing within and by virtue of the laws of the State of Ohio and organized to maintain and operate a railroad from Toledo to Harrison t'p, Paulding county, in the State of Ohio, and the Wabash and Western Railway Company, a corporation existing within and by virtue of the laws of the State of Indiana and organized to maintain and operate a line of railroad from State line, in Allen county, to State Line city, Warren county, in the State of Indiana.

That on or about the first day of October, A. D. 1862, the board of directors of the said Toledo and Wabash Railway Company, in pursuance of the power and authority vested in them by law, resolved that the president of said company be authorized and directed to cause to be prepared bonds of the said company to an amount not exceeding six hundred thousand dollars for the purpose of providing further equipment and satisfying other requirements of the said company, which bonds were to bear date November, 1862, and the principal thereof was to be payable to a trustee or the bearer in the city of New York on the first day of May, A. D. 1883, and to bear interest at seven per cent., payable semi-annually at the same place, which interest was to be represented by coupons;

that the bonds so to be issued should be executed in the usual
21 manner and under the corporate seal of said company and should be convertible into the common stock of said company at par at any time within five years from the date thereof, but should not be entitled to a dividend for any time on which the holder thereof should have received interest, and that the executive committee of said company be authorized to issue, sell, and dispose of the said bonds in such manner and upon such terms as they should deem to be for the best interests of said company; all of which more fully appear- by reference to a copy of said resolutions hereto attached, marked "Exhibit A," and made a part of this petition.

That on or about the first day of November, A. D. 1862, the said Toledo and Wabash Railway Company, by its president and secretary, duly authorised thereto and in accordance with said resolution, under its corporate seal executed a series of bonds, amounting altogether to the sum of six hundred thousand dollars, known as equipment bonds, severally and consecutively numbered, and being all of the same tenor and purport, except the numbers thereof and the sums thereby severally secured and payable, and that the following is a true copy of one of said bonds in said series:

No. 557. $500.

UNITED STATES OF AMERICA, *States of Ohio and Indiana.*

Toledo and Wabash Railway Company.

Issue of equipment bonds not to exceed $600,000 in amount.

The Toledo and Wabash Railway Company, a body corporate, acknowledges itself to be indebted to the bearer hereof for money borrowed in the sum of five hundred dollars to be paid on the first day of May 1883, with interest from and after the first day of May 1863, at the rate of seven per cent. per annum payable semi-annually on the first day of May and the first day of November in each year, on the surrender of the respective interest warrants hereto appended; both principal and interest payable at the company's agency in the city of New York.

22 This bond is one of a series authorized to be issusd under resolutions of the board of directors of said company passed on the first day of October 1862 to an amount not exceeding $600,000.00, and is convertible into common stock of said company at par, at any time within five years from the date thereof, but the stock to be issued therefor, shall not be entitled to a dividend for any time for which the interest may be paid on this bond which is convertible only at the option of the holder hereof.

In witness whereof the said company has caused its corporate seal to be hereunto affixed and its president and treasurer to subscribe their names hereto, this first day of November, 1862.

[SEAL.] A. WOODS, *President.*
J. N. DRUMMOND, *Treasurer.*

(Revenue stamps, 25 cents, cancelled.)

That annexed or attached to each of said several bonds was a series of interest warrants or coupons for each semi-annual installment of interest which would become due and payable on said bonds by the terms thereof until the principal of said bonds should become due and payable, and that all of said interest warrants or coupons were and are of the same tenor and effect, excepting the sums severally secured thereby and the time when the same would become due and payable and the numbers thereof; that said interest warrants or coupons were and are payable on the first days of May and November in each year, and that the following is a true and correct copy of one of said coupons or interest warrants:

"$17.50. Toledo and Wabash Railway Company.

Interest warrant for seventeen $\frac{50}{100}$ dollars, payable in the city of New York May 1st, 1875, for six months' interest on equipment bond for $500.

No. 557. J. N. DRUMMOND, *Treas'r.*"

23 That each of said coupons or interest warrants was executed and signed by said Toledo and Wabash Railway Company, by its treasurer duly authorized thereto.

That after said several bonds and the said several coupons or interest warrants thereunto annexed or attached had been duly executed as aforesaid by the said Toledo and Wabash Railway Company certain of said bonds, to wit, numbers five hundred and fifty-seven and five hundred and fifty-eight, of the denomination of five hundred dollars each, were long prior to the commencement of this action by the said Toledo and Wabash Railway Company, for value received, sold and delivered to *bona fide* purchasers thereof, who thereupon became the *bona fide* owners and holders thereof for value, and that prior to the commencement of this action the said plaintiff, for a valuable consideration and in good faith, purchased the said bonds hereinbefore particularly mentioned and of which the numbers are hereinbefore particularly mentioned, including the coupons or interest warrants thereto annexed or attached hereinafter particularly mentioned, being all the said coupons or interest warrants attached or annexed to said bonds which fell due and became payable on and after the first day of May, 1875, from the *bona fide* holders of said bonds, and that the same were by said *bona fide* holders assigned and transferred and delivered to it, the said plaintiff, and that the said plaintiff is now the *bona fide* holder and owner for a value of said bonds and coupons or interest warrants and of all the money due and to become due thereon; that on or about the 29th day of May, A. D. 1865, by an assignment signed by its president and secretary, duly authorized therefor, and sealed with its corporate seal, the said Toledo and Wabash Railway Company agreed

24 to consolidate its road, property, and capital stock with the road, property, and capital stock of the following-named railroad corporations duly organized and existing under and by virtue of the laws of the State of Illinois, viz., the Great Western Railway Company of 1859, the Quincy and Toledo

Railroad Company, and the Illinois and Southern Iowa Railroad Company, and that the new corporation formed by such consolidation became and was known as the Toledo, Wabash and Western Railway Company; that by the terms of said agreement for such consolidation the said Toledo & Wabash Railway Company entered therein on the basis of three million four hundred thousand dollars first-mortgage bonds, twenty-five hundred thousand dollars second-mortgage bonds, six hundred thousand dollars convertible equipment bonds, being the equipment bonds hereinbefore mentioned, and thirty-five hundred thousand dollars stock, and it was specially provided in said agreement, among other things, that all the rights, franchises, property, real and personal, debts, choses in action of the respective companies, said parties to said agreement of consolidation, should vest in the said consolidated company, and that all bonds and other debts in said agreement specified, including the said equipment bonds hereinbefore mentioned, should be protected by said consolidated company; that said agreement of consolidation was duly executed by the said The Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railway Company by the president and secretary of each of said companies respectively duly authorized therefor and under their corporate seals, and was ratified by the stockholders of said Toledo and Wabash Railway Company in due form of law on the 28th of June, 1865, by the stockholders of the said Great
25 Western Railway Company of 1859, and of the Quincy and Toledo Railroad Company on the 30th day of June, 1865, and by the stockholders of the Illinois and Southern Iowa Railroad Company on the first day of June, 1865, and was on or about the sixth day of July, 1865, filed in the office of the secretary of *the* state of the State of Ohio, and on the 3rd day of July, 1865, was filed in the office of the secretary of state of the State of Indiana, and on the 30th day of June, 1865, was filed in the office of the secretary of state of the State of Illinois, and the said Toledo, Wabash and Western Railway Company thereupon became a railroad corporation organized and existing under the laws of the States of Ohio, Indiana, and Illinois, owning a line of railway consisting of the respective roads of companies named in said agreement of said consolidation; that all of the rights, franchises, property, real and personal, debts, choses in action of the said Toledo and Wasbash Railway Company, upon the consummation of said consolidation passed to and became vested in the said Toledo, Wabash and Western Railway Company upon the considerations stated, and that no other provision was made for the payment of the outstanding debts of said Toledo and Wabash Railway Company, including the said equipment bonds, other than that contained in said agreement of consolidation; that said Toledo, Wabash and Western Railway Company paid the coupons or interest warrants attached to said equipment bonds as they matured from and after the time of said consolidation up to and including that falling due on the first day of May, 1870; that on or about the first day of February, 1867, the said Toledo, Wabash and Western Railway Company resolved to

make and issue its bonds to the extent of fifteen million dollars and to secure the same by a mortgage on its entire property, including the property which it derived from the
26 said Toledo and Wabash Railway Company, which said mortgage became and has been known as its consolidated mortgage, and the bonds secured thereby as its consolidated bonds; that the said Toledo, Wabash and Western Railway Company, or or about said last-mentioned date, made and executed its certain mortgage or trust deed to the defendants, Isaac H. Knox and James R. Jessup as trustees, in pursuance of said resolutions, to secure the payment of said consolidated bonds, amounting in the aggregate to the sum of fifteen million dollars and no more, with interest at the times and in the manner therein mentioned and set forth, as well as to secure the payment of a certain sinking fund as therein mentioned, which mortgage or trust deed was dated on said first day of February, 1867, and was duly sealed with the corporate or common seal of said company, and was subscribed by the president and secretary of said company duly authorized therefor and was duly acknowledged, and on or about the said date was delivered by the said Toledo, Wabash & Western Railway Company to said trustees therein named, a copy of which said mortgage or trust deed is hereto attached, marked "Exhibit B," and made a part of this petition; that in and by said mortgage or trust deed the said Toledo, Wabash & Western Railway Company, in consideration of one dollar, transferred, assigned, sold, and set over to the said trustees, Isaac H. Knox and James R. Jessup, all its real and personal property then owned or used or that thereafter might be owned or used by the said railway company in connection with its said railroad, and everything appertaining and appurtenant thereto, and all its franchises, powers, privileges, and chartered or other rights then acquired or to be thereafter acquired along its said line of railroad or branches thereof.

That in said mortgage or trust deed it is recited that said
27 Toledo, Wabash & Western Railway Company has been duly formed under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois by the consolidation of the stock, property, rights, franchises, and interests of the several companies known as the Toledo & Wabash Railway Company, the Great Western Railway Company of 1859, the Quincy and Toledo Railway Company, and the Illinois and Southern Iowa Railroad Company, and that at the time of each consolidation the property of said various companies was subject to certain bonded debts and mortgages created by said several companies or by other companies, which, at the time of creation of said debts and mortgages, were then owners of the property so consolidated; that in said mortgage or trust deed it is further recited that the funded debt of said Toledo, Wabash & Western Railway Company, including that secured by mortgage liens as well as that not so secured, amount in the aggregate to the sum of thirteen million three hundred thousand dollars, besides interest, and that said funded debt was represented and made up as follows, to wit, first-mortgage bonds of the Toledo &

Illinois Railroad Company for the sum of nine hundred thousand dollars, secured by a first mortgage on that part of the road of said Toledo, Wabash & Western Railway Company, in the State of Ohio, running from Toledo to the westerly boundary of said State; bonds of the Toledo and Wabash Railroad Company for the sum of one million dollars, secured by a second mortgage on the same property last mentioned; first-mortgage bonds of the Lake Erie, Wabash & St. Louis Railroad Company for the sum of twenty-five hundred thousand dollars, secured by a first mortgage on that part of the road of the said Toledo, Wabash & Western Railway Company lying in the State of Indiana; bonds of the Wabash & Western Railway Company for the sum of one million
28 five hundred thousand dollars, secured by a second mortgage on the last aforesaid property; first-mortgage bonds of the Great Western Railway Company for the sum of one million dollars, secured by a first mortgage on that part of the property of the said Toledo, Wabash and Western Railway Company in the State of Illinois extending from Decatur to the Illinois river at Naples; bonds of the last-named company for the sum of one million three hundred and fifty thousand dollars, secured by a mortgage on that part of the road of the said Toledo, Wabash & Western Railway Company in the State of Illinois extending from the State line of Indiana to the Illinois river, there being then outstanding of said bonds the sum of twenty thousand dollars, the rest having been returned by a portion of the bonds next described; first-mortgage bonds of the Great Western Railroad Company of 1859 for the sum of twenty-five hundred thousand dollars, secured by a mortgage on that part of the said Toledo, Wabash and Western Railway Company in the State of Illinois extending from Naples and Meredosia, at its western termini, to the boundary line between the States of Illinois and Indiana, the last-named bonds having been created to retire the aforesaid one million dollars and thirteen hundred and fifty thousand dollars of Great Western Railroad Company bonds; bonds of the Great Western Railway Company of 1859 for the sum of twenty-five hundred thousand dollars, secured by a mortgage on the last aforesaid property; bonds of the Illinois and Southern Iowa Railroad Company for the sum of three hundred thousand dollars, secured by a first mortgage on that part of the road of the said Toledo, Wabash & Western Railway Company extending from Clayton to Carthage, in the State of Illinois.

29 Bonds of the Toledo and Wabash Railway Company for the sum of six hundred thousand dollars, known as equipment bonds; bonds of the Toledo, Wabash and Western Railway Company for the sum of one million dollars, known as sinking-fund bonds.

That in said mortgage or trust deed it is further recited that it is deemed for the interests of the said Toledo, Wabash & Western Railway Company as well as for the benefit of the holders of all said various classes of bonds that the whole of the same should be consolidated into one and the same mortgage debt upon equitable principles, and that of the bonds to be issued and made and secured by

the said mortgage, to the amount in the aggregate of the sum of fifteen million dollars, there should be retained thirteen million three hundred thousand dollars to retire, in such manner and upon such terms as the directors of said company might from time to time prescribe, a like amount of the bonds of the various companies thereinbefore enumerated and described and representing the said funded debt, and that the balance of said bonds, to wit, one million seven hundred thousand dollars thereof, should be used to obtain additional equipment and improvements and for such additional purposes as the directors might deem advisible; that the said mortgage or trust deed was presently thereafter filed for record and was duly recorded in the manner required by law in the several offices in the counties in the States of Ohio, Indiana, and Illinois in which the property then owned by the said Toledo, Wabash & Western Railway Company and which is covered by the said mortgage was then situated; that said Toledo, Wabash and Western Railway Company made and issued its several bonds in the form and for the amounts mentioned in said mortgage or trust deed and sealed the same with the corporate seal of said company, and caused the names of its
30 president & treasurer to be thereto affixed, all of which bonds were equally secured by said mortgage to said trustees; that interest warrants or coupons for the payment of the interest becoming due on said bonds according to the terms thereof were annexed to each of said bonds; a copy of one of said bonds is fully set out in the copy of said mortgage hereto attached, marked "B;" that the said Toledo, Wabash & Western Railway Company did make, execute, and issued one million dollars of said consolidated bonds secured by the said consolidated mortgage or trust deed, and did therewith retire a like amount of certain of the bonds previously issued by the said company and then outstanding and which bonds are enumerated and described in the said consolidated mortgage or trust deed as bonds of the Toledo, Wabash and Western Railway Company, known as sinking-fund bonds, amounting in the aggregate to the said sum of one million dollars, and that said one million dollars of said consolidated bonds so issued are now outstanding, except as the same may have been purchased for the sinking fund mentioned and described in said consolidated mortgage or trust deed, and that there are now outstanding bonds of said issue amounting in the aggregate to the sum of two million six hundred and ten thousand dollars or thereabouts, which have come by transfer, sale, and delivery into the possession of and are now held by a large number of individuals, partnerships, and corporate bodies who are the owners thereof and are entitled to the moneys thereby agreed to be paid, but whose names are unknown to this plaintiff and are too numerous to be made parties to this action; that afterwards and on or about the 6th day of October, 1868, the said Toledo, Wabash and Western Railway Company, by an agreement signed by its president and secretary duly authorized thereto and sealed with its corporate seal in due form of law, agreed to consolidate its
31 road, property, and capital stock with the road, property, and capital stock of the Decatur and East St. Louis Railroad Com-

pany, a railroad company organized and existing under and by virtue of the laws of the State of Illinois; that by the terms of said agreement for said consolidation it was provided, among other things, that all the rights, franchises, privileges, property, and appurtenances of every description, choses in action, debts, dues, and demands of the said parties thereto should vest in the said consolidated company, and that the terms of the articles of consolidation hereinbefore mentioned, whereby the said Toledo, Wabash and Western Railway Company was formed, should be and remain in full force and be binding upon the new consolidated company so far as the same could be applicable and so far as the same was not in conflict with the specific provisions therein, and that said consolidated company should retain the name of the Toledo, Wabash and Western Railway Company and be known thereby; that the provisions contained in said consolidation agreement entered into as aforesaid on the 29th day of May, 1865, to protect the bonds therein referred to, including said equipment bonds, was applicable so as to remain in full force and be binding upon said new consolidated company and was not in conflict with the specific provisions of said consolidation agreement entered into as aforesaid on the 6th day of October, 1868; that the said Decatur and East St. Louis Railroad Company, by its president and secretary duly authorized thereto, duly executed, and under its corporate seal, said last-mentioned agreement of consolidation on the 3rd day of June, 1869, and the same was on the 7th day of October, 1868, in due form of law ratified by the stockholders of the said Toledo, Wabash and Western Railway Co., and on the 25th day of August, 1869, was ratified in due form of law by the stockholders of the said Decatur and East St. Louis Railroad Company, and said last-
32 mentioned articles of consolidation were, on or about the 10th day of August, 1870, filed in the office of the secretary of state of the State of Ohio, and were, on the 8th day of August, 1870, filed with the secretary of state of the State of Indiana, and were, on the 9th day of August, 1870, filed with the secretary of state of the State of Illinois; that all of the rights, franchises, property, real and personal, debts, and choses in action of the said parties to said last-mentioned agreement of consolidation, including all the rights, franchises, property, real and personal, debts, choses in action of the Toledo and Wabash railway, hereinbefore mentioned, by virtue of such consolidation passed to and vested in said new company which became the owner of the same, subject to all the liens and charges thereupon created by said Toledo, Wabash, and Western Railway Company and subject to the lien and charge thereupon of the outstanding indebtedness of the said Toledo and Wabash Railway Company agreed to be paid in and by the terms of the agreement of consolidation hereinbefore set forth, to which the said Toledo and Wabash Railway Company was a party, including said equipment bonds, which said equipment bonds the said new company under the provision of said last-mentioned consolidation agreement became obligated and agreed to pay; that said defendant, the Toledo, Wabash and Western Railway Company, from and after the time of

said last-mentioned consolidation paid the coupons or interest warrants on said equipment bonds hereinbefore mentioned as the same matured up to and including that falling due on the 1st day of November, 1874; that on or about the 1st day of April, 1873, the said defendant The Toledo, Wabash and Western Railway Company, as parties of the first part, and the said defendants Isaac H. Knox and James R. Jessup, as trustees named in the consolidated mortgage or trust deed hereinbefore mentioned, as parties of the second
33 part, made and executed a certain indenture and deed of further assurance wherein the said defendant, The Toledo, Wabash and Western Railway Company, expressly covenanted and agreed with the said parties of the second part and with all persons whom it might in anywise concern that the said defendant, The Toledo, Wabash and Western Railway Company, would not make or issue or attempt to make or issue any of the then remaining twelve million three hundred thousand dollars of the reserve bonds secured by said consolidated mortgage heretofore executed to the said parties of the second part as trustees, except for the purpose of or simultaneously with the retiring of an equal amount of the balance then remaining of the funded debt enumerated in said consolidated mortgage or trust deed aforesaid, so that when all of the said reserved bonds should have been used the whole of the balance of the funded debt would be extinguished and discharged; and it is in said indenture and deed of further assurrance further covenanted by and on the part of the party of the first part thereto with said trustees and with all persons whom it might in anywise concern that the covenants therein contained should be supplementary to said consolidated mortgage or trust deed and constitute a part of said consolidated mortgage aforesaid and be of the same effect to all intents and purposes as if they had been inserted therein; that the same indenture and deed of further assurance was duly executed by said defendant, The Toledo, Wabash and Western Railway Company, by its president and secretary, duly authorized thereto, and was sealed with its corporate seal, and was duly signed and sealed by said trustees, and a copy thereof is hereto attached, marked Exhibit "C," and made a part of this petition.

Plaintiff further says that the directors of the said Toledo, Wabash & Western Railway Company have never yet prescribed the manner and terms in which the various classes of bonds enumer-
34 ated and described in said consolidated mortgage or trust deed representing the funded debt by said consolidated mortgage especially secured, including said equipment bonds, should be retired as in said mortgage required, but have wholly neglected and refused so to do, and have never issued such consolidated bonds to retire said equipment bonds outstanding or any of them, and that said plaintiff is ready and willing and has hitherto been ready and willing and the persons from whom it procured said equipment bonds owned by it as aforesaid have always been ready and willing to accept said consolidated bonds in the place and stead of the said equipment bonds now held and owned by the plaintiff hereinbefore

enumerated, and which it claims are secured by said consolidated mortgage hereinbefore set forth.

That the said defendant, The Toledo, Wabash and Western Railway Company, from the time of its organization continued in the possession of and to own and operate the said line of railroad and property which passed to it and vested in it at the time of its formation, as hereinbefore set forth, including the property and railroad originally owned by the Toledo & Wabash Railway Company, hereinbefore mentioned, lying in the States of Ohio, Indiana, and all the other property described in the said consolidated mortgage or trust deed until the foreclosure proceedings hereinafter set forth were instituted; that on or about the 22nd day of February, 1875, an action was instituted and a petition filed in the court of common pleas of Lucas county, Ohio; that on or about the 24th day of February, 1875, an action was instituted and a complaint filed in the Cass County circuit court of the State of Indiana, and that on or about the 24th day of February, 1875, an action was instituted and a complaint filed in the Vermillion County circuit court of
35 Illinois; that all of said actions were instituted at the suit of The Metropolitan National Bank, in New York, and others, complainants, against the said defendants, The Toledo, Wabash & Western Railway Company, and others, defendants; that in said proceedings in all three of said States a cross-bill or cross-petition was filed by one Valentine Ketcham, praying that the property of the said Toledo, Wabash & Western Railway Company covered by a certain mortgage executed on or about the first day of February, 1873, by the said Toledo, Wabash and Western Railway Company upon the entire line of railroad then belonging to it and other property to the New York Guaranty and Indemnity Company, trustee, to secure the payment of five million dollars, and of which mortgage the said Ketcham was then trustee, might be sold to satisfy the amounts due to the holders of the bonds secured by said last-mentioned mortgage; that in said proceedings in the State of Ohio on or about the fourteenth day of December, 1875, a decree was entered in the said court of common pleas of Lucas county, Ohio, by which, among other things, it was ordered and decreed that the said consolidated mortgage or trust deed hereinbefore set forth was duly and legally made and recorded in pursuance of the law of the several States hereinbefore named; that it was a valid conveyance for the purpose therein mentioned, and as such was a lien upon the property therein described; that said consolidated mortgage or trust deed was the first and best lien upon the whole and consolidated line of railway belonging to said Toledo, Wabash & Western Railway Company, excepting the branch extending from Decatur to East St. Louis, one hundred eight and five-tenths miles in length, as to which said mortgage was not a lien, but which said consolidated mortgage was subordinate and inferior to several mortgage liens upon separate parts and subdivisions of said road which are more particularly described in
36 said decree, excepting the road between Carthage and the Mississippi river, to wit, from Carthage to Evanston, five and

four-tenth miles, completed at the date of said decree, and from Evanston to the Mississippi river, at Hamilton, on a further distance of about seven miles, for which the right of way was owned by said Toledo, Wabash & Western Railway Company, and also except the road from Clayton to Camp Point, a distance of six miles, as to all of which the said consolidated mortgage was thereby found to be a first mortgage; that in and by said decree it was further ordered and adjudged that to enforce the provisions of the mortgage or trust deed of which said Ketcham was trustee as aforesaid, the real property, equipments, and franchises as an entirety of said Toledo, Wabash & Western Railway Company should be sold by a special master commissioner therein named, subject, however, to the liens of all mortgages and trust deeds prior to the said mortgage of which said Ketcham was trustee, and particularly described in said decree, including said consolidated mortgage, and it was also ordered and adjudged that the sale of the said road, property, equipments, and franchises under said decree was to be without prejudice to any claim which might be made by the holders of the aforesaid equipment bonds, and that all questions as to those bonds were to be left open; that subsequently and in the February term of the year A. D. 1876 of the circuit court of Cass county, Indiana, and of the circuit court of Vermillion county, Illinois, decrees were made in the actions hereinbefore mentioned therein pending in all particulars adopting the said decree of said court of common pleas of Lucas county, Ohio, as the decree of the said several courts respectively; that in pursuance of said decree a sale was had of all the said property, effects, rights, and franchises of the said Toledo, Wabash & Western Railway Company on the 10th day of
37 June, A. D. 1876, to John W. Ellis and others, and subsequently thereafter, and on or about the first day of January, 1877, a proper deed of conveyance was made, executed, and delivered to the said John W. Ellis and others by Jacob D. Cox, who had been appointed by said decree special master commissioner to execute the same, and who had made the said sale whereby was conveyed to the said John W. Ellis and others all and singular the railroad of the said Toledo, Wabash and Western Railway Company, extending from the city of Toledo, in the State of Ohio, southwesterly to and through the State of Indiana, and to East St. Louis, and to Hamilton, on the Mississippi river, and to Naples and Camp Point, in the State of Illinois, an aggregate length of six hundred and one miles, including the right of way, road-bed, and the superstructures of all sorts thereon; all repair and other shops and manufacturies, with the fixed and movable machinery, tools, and implements thereunto belonging; all engines, cars, rolling stock, and equipments of every kind and description; all supplies of timber, lumber, fuel, iron, steel, and other supplies intended for *the* use in running said road; all equities to any real or personal property, debts, and demands due the said company, together with the franchises of said railway company and of the several original companies of which it is composed and the right and franchise to be a corporation, together with all corporate franchises of said company

and of the said companies severally, including the rights and franchises of said several companies to be and act as a corporation; to have and to hold the same, with the appurtenances aforesaid, subject as aforesaid, unto the said John W. Ellis and others as joint tenants and not tenants in common, and to the survivors and survivor of the said parties and to their assigns, and to the heirs of the last survivor of the said parties; that the said defendant, the Wabash Railway Company, is a consolidated railway corporation existing
38 under and by virtue of the law of the States of Ohio, Indiana, and Illinois, and was formed by the consolidation of the Wabash Railway Company of Ohio, the Wabash Railway Company of Indiana, and the Wabash Railway Company of Illinois, corporations organized and existing on and prior to the 6th day of January, A. D. 1877, under the laws of said State respectively; that the said Wabash Railway Company of Ohio was on or about the 28th day of December, A. D. 1876, organized as a corporation under the law of the State of Ohio by John W. Ellis, Alexander M. White, John L. Martin, George I. Seney, and Henry A. V. Post, who were designated in the articles of association as the purchasers at the judicial sale of the railroad and property of the Toledo, Wabash and Western Railway Company, hereinbefore mentioned, under and by virtue of the aforesaid decrees, and in said articles of association it was recited that the same were entered into by the parties thereto for the purpose of forming a corporation under the laws of the State of Ohio, referring particularly to an act of the legislature of the State of Ohio passed May 7th, 1869, entitled "An act supplementary to an act entitled An act to authorize receivers of insolvent railroad companies to sell unfinished road beds and franchises," passed May 14th, 1868; that the said Wabash Railway Company of Indiana and the said Wabash Railway Company of Illinois were organized under the laws of their respective States for the same purposes as those for which the said Wabash Railway Company of Ohio was organized, to wit, to take title to the property and succeed to the franchises of the said defendant The Toledo, Wabash & Western Railway Company under the laws of said States respectively; that the said railway company of Ohio, the Wabash Railway Company of Indiana, the Wabash Railway Company of Illinois, on or about the first day of January, A. D. 1877, duly
39 entered into articles of consolidation in due form of law executed by each of said companies by their respective presidents and secretarys duly authorized thereto and sealed with their corporate seal, which said articles of consolidation were duly filed in the office of the secretary of state of the State of Ohio on or about the 10th day of January, 1877, and that the name of — consolidated company as designated is said articles of consolidation was "The Wabash Railway Company," and that said corporation so formed is the defendant in this action, the Wabash Railway Company; that on or about the 12th day of January, 1877, said John W. Ellis and the others associated with him as purchasers of the property, rights, franchises, and railroad of said defendant, The Toledo, Wabash & Western Railway Company, at the judicial sale herein-

before mentioned, executed and delivered to the said defendant, The Wabash Railway Company, a deed of the aforesaid property conveyed to them by the said Jacob D. Cox as special master commissioner, subject to the payment of all liabilities charged upon said property by the aforesaid decrees and subject to the liens of said consolidated mortgage or trust deed hereinbefore mentioned and the rights of the holders of the bonds secured thereby; that said defendant, The Wabash Railway Company, forthwith entered into the possession of the property, rights, equipments, and franchises conveyed to them as aforesaid and continued in possession thereof till its consolidation with the St. Louis, Kansas City and Northern Railroad Company, hereinafter set forth, as the owner and holder thereof, and in operating and running the said continuous line of railroad and in exercising the franchises conveyed and transferred to them as aforesaid; that the property so conveyed to the defendant, The Wabash Railway Company, included all the property,
40 railroad, and franchises originally owned, possessed, and exercised by the Toledo and Wabash Railway Company hereinbefore mentioned and owned by said Toledo & Wabash Railway Company at the time of the issue of said equipment bonds, and this plaintiff says that said defendant, The Wabash Railway Company, took said property and the whole thereof subject to the lien, equity, and charge thereupon of such equipment bonds, including the said equipment bonds held and owned by this plaintiff as aforesaid. This plaintiff further says that said defendant, The Wabash Railway Company, was in fact and effect the said defendant, The Toledo, Wabash & Western Railway Company, in a reorganized form, and that the capital stock of said Wabash Railway Company, consisting of one hundred and sixty thousand shares, was subscribed for and issued to the stockholders of said defendant, The Toledo, Wabash & Western Railway Company, except eight hundred shares, the same being issued to such stockholders at the rate of ten dollars for each share of stock of one hundred dollars per value; that at the time of the said sale of the rights, property, and franchises of the said defendant, The Toledo, Wabash & Western Railway Company, under the decrees hereinbefore mentioned, the said property, rights, franchises, and various parts thereof were, in addition to said consolidated mortgage, subject to the liens of various mortgages issued to secure the payment of bonds then outstanding made and executed by the various companies out of which the Toledo, Wabash & Western Railway Company was formed and by the Decatur and East St. Louis Railroad Company, and covering the separate properties of those companies or portions thereof owned by said companies at the times said mortgage- were made and executed. The following is a statement of such mortgage liens: A first mortgage made by the Toledo and Illinois Railroad Company for the sum of
41 nine hundred thousand dollars, securing first-mortgage bonds of that company due as extended August 1st, 1890, for such sum; a second mortgage made by the said Toledo and Wabash Railway Company for one million dollars, securing bonds of said company due November 1st, 1878, for that amount.

A first mortgage made by the Lake Erie, Wabash and St. Louis Railroad Company for twenty-five hundred thousand dollars, securing first-mortgage bonds of that company due as extended August 1st, 1890; a second mortgage made by the Wabash & Western Railway Company for the sum of fifteen hundred thousand dollars, securing bonds of that company due November 1st, 1878.

A mortgage made by the Great Western Railway Company of 1859 for the sum of twenty-five hundred thousand dollars, securing bonds of that company due August 1st, 1888, for that amount; a second mortgage made by the Great Western Railway Company of 1859 for the sum of twenty-five hundred thousand dollars, securing bonds of that company due May 1st, 1893, for that amount.

A mortgage made by the Illinois and Southern Iowa Railroad Company for the sum of three hundred thousand dollars, securing bonds of that company due August 1st, 1882, for that amount; a mortgage made by the Toledo & Quincy Railroad Company for the sum of five hundred thousand dollars, securing bonds of that company for that amount; bonds of the Toledo and Wabash Railway Company due May 1st, 1883, for the sum of six hundred thousand dollars, being the above-mentioned equipment bonds.

A mortgage made by the Decatur and East St. Louis Railroad Company for the sum of twenty-seven hundred thousand dollars, securing bonds of that company for that amount; bonds issued under the aforesaid consolidated mortgage made and issued
42 by the Toledo, Wabash & Western Railway Company, amounting to two million six hundred and ten thousand dollars or thereabouts.

That the said mortgages, with the exception of that executed by the Decatur and East St. Louis Railroad Company and said consolidated mortgage, are the same mortgages recited and described in the consolidated mortgage as hereinbefore set forth and covered respectively the various railroad properties and franchises also described in said consolidated mortgage.

That on so much of the property of the said Toledo and Wabash Railway Company as was situated in the State of Ohio at the time the same came into the possession and ownership of the said Toledo, Wabash and Western Railway Company as hereinbefore set forth, there were only the following mortgage liens thereon: The said mortgage executed by the Toledo and Illinois Railroad Company for the sum of nine hundred thousand dollars, securing bonds of that company to that amount due as extended August 1st, 1890, and the said mortgage executed by the Toledo and Wabash Railway Company for the sum of one million dollars, securing bonds of that company to that amount due and payable November 1st, 1878, and that the property covered by said last-mentioned two mortgages was and is the railroad property of the Toledo and Wabash Railway Company and situated in the State of Ohio and extending from the city of Toledo and passing through the counties of Lucas, Henry, Fulton, Paulding, and Defiance to the western boundary line of said State of Ohio, in Harrison township, in said county of Paulding; that on so much of the property of the said Toledo and

Wabash Railway Company as was situated in the State of Indiana at the time the same came into the possession and ownership of the said Toledo, Wabash & Western Railway Company there were the following mortgage liens thereon: The said mortgage made
43 and executed by the Lake Erie, Wabash & St. Louis Railroad Company made on or about the first day of August, A. D. 1853, to secure an issue of bonds to the amount of two million five hundred thousand dollars, due as extended on the first day of August, 1890, and said mortgage made and executed by the Wabash and Western Railway Company on or about the 15th day of October, 1858, to secure an issue of bonds to the total amount of fifteen hundred thousand dollars; that at the time the consolidated mortgage hereinbefore mentioned was made and executed by the said Toledo, Wabash & Western Railway Company there were no other mortgage liens on the property and railroad of the said Toledo, Wabash & Western Railway Company situated in the States of Ohio and Indiana, being the property formerly owned by the said Toledo & Wabash Railway Company excepting the four mortgages last above set forth, and at the time said last-mentioned property situated in the States of Ohio and Indiana came into the possession of the said defendant, The Wabash Railway Company, there were no other mortgage liens thereon excepting the said four mortgages last set forth and such additional lien as may have been created and imposed thereupon by the execution and delivery of the aforesaid consolidated mortgage; that on or about the 13th day of January, A. D. 1877, the said defendant, The Wabash Railway Company, executed and delivered to one George I. Seney, as trustee, a certain mortgage on its railroad and property to secure certain promissory notes payable at various times until January 1st, A. D. 1882, amounting in all to one million twenty-six thousand five hundred fifty-five and forty-two one-hundredths dollars; that said defendant, The Wabash Railway Company, made its certain promissory notes amounting to said sum and delivered the same to certain persons, who now hold the same and of whose names this plaintiff is
44 ignorant, and that said mortgage was duly recorded on or about the 29th day of January, A. D. 1877.

Plaintiff further says that it is unable to state how much there is now outstanding and due and unpaid on said last-mentioned mortgage, and plaintiff charges and alleges that the holders of said notes secured by the last-mentioned mortgage purchased and took such notes subject to the lien and equity of said bonds known as equipment bonds upon all the property owned by said Toledo, Wabash & Western Railway Company and all of the property which said Toledo, Wabash & Western Railway Company took and derived at the time of its organization from the said Toledo and Wabash Railway Company, and that the holders of said promissory notes and George I. Seney as such trustee as aforesaid were and are chargeable in equity with notice of such lien and equity of said equipment bonds; that on or about the 17th day of May, A. D. 1879, the said defendant, The Wabash Railway Company, made and executed its certain mortgage or trust deed covering its entire railroad property

and franchises to the defendants John Humphreys and Daniel A. Lindley as trustees to secure the payment of an issue of bonds bearing the same date, made and executed by said company, amounting in the aggregate to the sum of two million dollars, with interest at the times and in the manner therein mentioned and set forth; that said mortgage or trust deed is dated on the said 17th day of May, A. D. 1879, and was duly sealed with the corporate or common seal of said company and subscribed by the proper officers of said company duly authorized thereto, and was duly acknowledged and delivered to said trustees; that said mortgage was thereafter, to wit, on the 11th day of August, A. D. 1879, filed for record in the recorder's office of said Lucas county and was thereafter duly
45 recorded in the manner required by law, in said recorder's office, on the 13th day of August, A. D. 1879, in volume 76 of Mortgages, at page 281, and also in the several offices in the counties in the States of Ohio, Indiana, and Illinois in which the property owned by the said Wabash Railway Company and which is covered by said mortgage was situated; that bonds secured by said mortgage have been issued and the amount thereof now outstanding is unknown to this plaintiff.

Plaintiff alleges that said last-mentioned mortgage is inferior and subject to the lien and equity of said bonds known as equipment bonds upon all of the property which was owned by the Toledo, Wabash & Western Railway Company and upon all of the property which said Toledo, Wabash & Western Railway Company took and derived at the time of its organization from the said Toledo and Wabash Railway Company, and that the holders of said bonds and the trustees named in said mortgage were and are chargeable in equity with notice of such lien and equity of said equipment bonds.

Plaintiff further states that in and by the terms of the said consolidated mortgage it was especially provided that in case there was default in the payment of the interest due upon the said bonds secured thereby or in the payment of the installment payable into the sinking fund therein provided or of the principal of the said bonds, then and in that case the trustees therein named should, upon the written request of the holder or holders of the majority of the then outstanding bonds, cause the said mortgaged premises to be sold at public auction; that the holders of the majority of the bonds secured under the said consolidated mortgage and outstanding have heretofore consented to a so-called funding scheme proposed and carried into effect by said defendant, The Wabash Railway Company, by which for certain considerations they have accepted scrip for the overdue coupons or interest warrants, so that it is im-
46 practicable that the holders of a majority of such bonds should make any such requests for the sale of said mortgaged premises; that the said consolidated mortgage or trust deed provided that the property thereby conveyed should be subject to the possession, control, and management of said Toledo, Wabash & Western Railway Company, parties thereto of the first part, only so long as the said company should well and truly perform all and

singular the stipulations of the said consolidated bonds and of the covenants in the said consolidated mortgage or trust deed.

The said plaintiff further alleges and says that on or about the 14th day of August, A. D. 1879, by an agreement signed by its president and secretary, duly authorized thereto, and sealed with its corporate seal, the said defendant, The Wabash Railway Company, agreed to consolidate its road, property, franchises, and capital stock with the road, property, franchises, and capital stock of the St. Louis, Kansas City and Northern Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri.

That in said agreement of consolidation it is, among other things, recited that the railway of the party of the first part, the said defendant, The Wabash Railway Company, extends from the city of Toledo, in the State of Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, in the last-named State, with various branch lines in said agreement specified; that the railway of the party of the second part, the said St. Louis, Kansas City and Northern Railway Company, extends from St. Louis, in the State of Missouri, in a northwesterly direction to Kansas City, in the said State, with certain extensions and branch lines in said agreement especially stated; that said lines of railway would when
47 united form one continuous line of railway in the same general direction from the waters of Lake Erie at Toledo, Ohio, to the cities of Council Bluffs and Kansas City, on the Missouri river, and that it is considered for the advantage of both of said companies that the lines of railway in said agreement described should be united and consolidated and be owned and worked in common.

That it was in and by such agreement provided and agreed that upon the ratification of the said agreement by the shareholders of the corporations parties thereto and the election of directors and other officers of the new corporation provided for in said agreement all the property, rights, and franchises of whatever name or nature belonging to said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company or either of them should pass to and be vested in the said new corporation and the two first-named corporations should thereupon cease and determine; that it is further provided in and by said agreement that the name of the said new corporation should be "the Wabash, St. Louis & Pacific Railway Company;" that on or about the said 14th day of August, A. D. 1879, the St. Louis, Kansas City & Northern Railway Company duly executed said agreement of consolidation on its part by its president and secretary, duly authorized thereto, and sealed the same with its corporate seal.

That said agreement of consolidation, together with a supplementary agreement entered into between the said companies on or about the 10th day of October, A. D. 1879, were on or about the 14th day of October, A. D. 1879, ratified in due form of law by the stockholders of the said defendant, The Wabash Railway Company, and were ratified and confirmed by a vote of more than two-thirds of the

whole number of the shares of the capital stock of the said defendant,
The Wabash Railway Company, and were on or about the 14th
48 day of October, A. D. 1879, ratified and confirmed in due
form of law by the stockholders of the said St. Louis, Kansas City and Northern Railway Company; that the said articles of consolidation were duly filed in the office of the secretary of state of the State of Ohio on the 25th day of October, A. D. 1879, and that the said corporation thereby formed, the defendant in this action, The Wabash, St. Louis & Pacific Railway Company, thereupon became a railroad corporation duly organized and existing under the laws of the various States of its creation, and all of the rights, franchises, and property, real and personal, then owned and possessed by the said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company passed to and became vested in the said new consolidated company, the said Wabash, St. Louis & Pacific Railway Company, and that said last-named company now owns and is in possession of all of the said rights, franchises, and property, and owns and operates all the various lines of railway hereinbefore mentioned and set forth, including the property and railway originally owned by the Toledo and Wabash Railway Company, hereinbefore mentioned, situated in the States of Ohio and Indiana, and by the defendant in this action, The Toledo, Wabash and Western Railway Company; that prior to said consolidation of the said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company the said companies and the stockholders or shareholders of each of said companies were duly notified of the claim, lien, and equity of the equipment bonds hereinbefore mentioned and enumerated and owned by the plaintiff, as aforesaid, on the property of the said Toledo and Wabash Railway Company and of the said Toledo, Wabash & Western Railway Company.

Plaintiff further says that the Toledo and Wabash Rail-
49 way Company hereinbefore mentioned has not since the year
1865, when it was merged in the said Toledo, Wabash & Western Railway Company, maintained or continued its corporate organization, and has not since that time exercised any of its corporate power or franchises; that said last-mentioned company and said Toledo, Wabash and Western Railway Company own no property or assets of any kind whatsoever, and that all of the property, assets, and franchises which they did own and possess have passed to and become vested in the said defendant, The Wabash, St. Louis and Pacific Railway Company, as hereinbefore set forth, which now owns and is in possession of the same, subject to the lien in equity of the holders of said equipment bonds on the property originally owned by said Toledo and Wabash Railway Company and upon the property of said Toledo and Western Railway Company covered by said consolidated mortgage; that plaintiff further says that the interest warrants or coupons annexed or attached to all of said bonds known as equipment bonds, hereinbefore specifically mentioned and enumerated, which by their terms were due and payable on the first day of May, 1875, have not nor has either of them been paid;

that each of said coupons or interest warrants due and payable as aforesaid on the first day of May, A. D. 1875, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-four; that each of said coupons or interest warrants attached to the said bonds of the denomination of five hundred dollars is for the sum of seventeen and fifty one-hundredths dollars, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the first day of May, A. D. 1875, there were two of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the aforesaid
50 equipment bonds numbers five hundred and fifty-seven and five hundred and fifty-eight, hereinbefore mentioned, which by their terms were due and payable on the first day of November, A. D. 1875, have not nor has either of them been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid on the first day of November, 1875, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-five; that each of said last-mentioned coupons or interest warrants *are* attached to the said bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the bonds known as equipment bonds, hereinbefore specifically mentioned and enumerated, which became due and payable on said first day of November, A. D. 1875, for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned by plaintiff and known as equipment bonds, hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, A. D. 1876, have not nor has either of them been paid.

That each of said interest warrants or coupons due and payable as aforesaid on the first day of May, 1876, bears the number of the bond to which it is attached and has also a separate coupon number, to wit, the number twenty-six; that each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the bonds hereinbefore specifically enumerated and mentioned which became due and payable on said first day of May, A. D. 1876, for the sum of seventeen and
51 fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to said bonds owned by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, A. D. 1876, have not nor has either of them been paid.

That each of said last-mentioned interest warrants or coupons due and payable as aforesaid on the first day of November, A. D. 1876, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-seven; that

each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the said bonds hereinbefore specifically mentioned and enumerated which became due and payable on the first day of November, 1876, and are for seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of May, 1877, have not nor has either of them been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid on the first day of May, 1877, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-eight; that each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars each, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically enumerated which became due and payable on said first day of May, 1877, there are two for the
52 sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the bonds owned by the plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and *by* which by their terms became due and payable on the first day of November, 1877, have not nor has either of them been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, number twenty-nine.

That each of said last aforesaid coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars each, and that there are two coupons or interest warrants attached to said bonds hereinbefore specifically mentioned and enumerated for seventeen and fifty one-hundredths dollars each which became due and payable on said first day of November, A. D. 1877; that the interest warrants or coupons annexed or attached to the said bonds owned by the plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable May 1st, 1878, have not nor has any of them been paid; that each of said last-mentioned coupons or interest warrants due as aforesaid bears the number of the bond to which it is attached and a separate coupon number, to wit, number thirty.

That each of the aforesaid coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars each, and there are two of the coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became
53 due and payable on the first day of May, A. D. 1878, and are for

seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, A. D. 1878, have not nor has any of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which they are attached, and also a separate coupon number, to wit, number thirty-one.

That said last-mentioned coupons or interest warrants are attached to bonds of the denomination of five hundred dollars and are for seventeen and fifty one-hundredths dollars each, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the said first day of November, A. D. 1878, there are two for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of May, A. D. 1879, have not nor has any of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is attached or annexed, — also a separate coupon number, to wit, the number thirty-two.

That each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars each, and there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars each attached to the bonds hereinbefore specifically mentioned and enumerated which became due
54 and payable on the said first day of May, A. D. 1879; that the interest warrants or coupons attached or annexed to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by the terms thereof became due and payable on the first day of November, A. D. 1879, have not nor has any of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-three.

That each of said last-mentioned coupons or interest warrants *are* attached or annexed to bonds of the denomination of five hundred dollars and *are* each for seventeen and fifty one-hundredths dollars, and that there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars attached to the said bonds hereinbefore specifically mentioned and enumerated which became due and payable on the said first day of November, 1879; that the interest warrants or coupons annexed or attached to the bonds owned and held by plaintiff and known as equipment bonds, as is hereinbefore specifically mentioned and enumerated, and which by their

terms became due and payable on the first day of May, A. D. 1880, have not nor has either of them been paid; that each of the last aforesaid coupons or interest warrants bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number thirty-four.

That each of said last-mentioned coupons or interest warrants is attached to bonds of the denomination of five hundred dollars and is for the sum of seventeen and fifty one-hundredths dollars each, and that there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars each attached to the said bonds hereinbefore specifically mentioned
55 and enumerated which became due and payable on said first day of May, A. D. 1880; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as is hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of November, A. D. 1880, —.

That each of the last aforesaid coupons and interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-five.

That each of last-mentioned coupons or interest warrants is attached to bonds of the denomination of five hundred dollars and is for the sum of seventeen and fifty one-hundredths dollars each, and that two of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on the said first day of November, A. D. 1880; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, A. D. 1881, have not nor has either of them been paid; that each of the last aforesaid coupons or interest warrants due and payable at the time aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-six.

That each of said last-mentioned coupons or interest warrants is attached to a bond of the denomination of five hundred dollars and is for the sum of seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants attached to said
56 bonds hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on the said first day of May, A. D. 1881; that the interest warrants or coupons annexed or attached to the said bonds owned and held by said plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of November, A. D. 1881, have not nor has either of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or

attached, and also a separate coupon number, to wit, the number thirty-seven.

That each of said last-mentioned coupons or interest warrants is attached to a bond of the denomination of five hundred dollars and is for seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants so attached to said bonds as hereinbefore mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on said first day of November, A. D. 1881; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, A. D. 1882, have not nor — either of them been paid.

That each of the last aforesaid coupons or interest warrants due and payable at the time aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-eight.

That each of the said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars,
57 and two of said coupons or interest warrants so attached to said bonds as hereinbefore specifically mentioned and enumerated, for the sum of seventeen and fifty one-hundredths dollars each, became due and payable on said first day of May, 1882; that the interest warrants or coupons annexed or attached to the said bonds owned and held by the plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of November, A. D. 1882, have not nor has *neither* of them been paid; that each of the last aforesaid coupons or interest warrants due and payable at the time aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-nine.

That each of the last-mentioned coupons or interest warrants *are* annexed or attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants so attached to said bonds as hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on the said first day of November, A. D. 1862; that no part of the interest falling due on said bonds known as equipment bonds, hereinbefore particularly mentioned and enumerated, on and since the first day of May, 1875, according to the terms thereof, and of the said coupons or interest warrants thereto attached, has been paid, though payment thereof has been duly demanded, and that all of said defendants which were obliged to pay the same have wholly failed to pay said interest which has fallen due on said equipment bonds since the aforesaid date and which fell due on that day and have refused to pay the same; that the aggregate

amount due and payable for interest as aforesaid upon said
58 bonds known as equipment bonds, hereinbefore particularly mentioned and enumerated, pursuant to the coupons or interest warrants hereinbefore particularly mentioned, and now owned and held by plaintiff, was, on the first day of May, 1875, thirty-five dollars, and was, on the first day of November, 1875, thirty-five dollars, and was, on the first day of May, 1876, thirty-five dollars, and on the first day of November, 1876, thirty-five dollars, and on the first day of May, 1877, thirty-five dollars, and on the first day of November, A. D. 1877, thirty-five dollars, and on the first day of May, 1878, thirty-five dollars, and on the first day of November, 1878, thirty-five dollars, and on the first day of May, 1879, thirty-five dollars, and on the first day of November, 1879, thirty-five dollars, and on the first day of May, A. D. 1880, thirty-five dollars, and on the first day of November, A. D. 1880, thirty-five dollars, and on the first day of May, A. D. 1881, thirty-five dollars, and on the first day of November, 1881, thirty-five dollars, and on the first day of May, 1882, thirty-five dollars, and on the first day of November, A. D. 1882, thirty-five dollars, and there will become due as interest on the first day of May, A. D. 1883, the further sum of thirty-five dollars, and the principal of said bonds, to wit, one thousand dollars, will be due and payable on said first day of May, A. D. 1883.

That said plaintiff further says that upon the transfer of the property and franchises of the said Toledo and Wabash Railway Company to the said Toledo, Wabash and Western Railway Company, as hereinbefore set forth, part of the consideration for such transfer was the agreement on the part of the said Toledo, Wabash and Western Railway Company to pay the said bonds known as equipment bonds, and that such transfer and agreement constituted said bonds known as equipment bonds and all the moneys to become due thereon a lien on the said property and franchises of said
59 Toledo and Wabash Railway Company transferred by the last-named company to the said Toledo, Wabash & Western Railway Company in favor of the holders of such bonds; that thereafter and on the first day of February, A. D. 1867, said Toledo, Wabash & Western Railway Company, recognizing the lien of said bonds known as equipment bonds, executed, as hereinbefore set forth, the consolidated mortgage for the purpose of consolidating said equipment bonds and the other bonds recited in said consolidated mortgage into one and the same mortgage debt, and thereby secure to the holders of said equipment bonds, not only a lien in equity on the road and property of said Toledo and Wabash Railway Company, so transferred to said consolidated company, for such unpaid purchase price thereof, but also the right in equity to have said bonds further secured by said consolidated mortgage upon all the property and franchises of said consolidated company on an equality with all other bonds issued under said mortgage.

Whereupon plaintiff prays that this court will ascertain and determine the amount due on the said bonds known as equipment bonds and held and owned by the plaintiff herein, and will adjudge and determine the said bonds known as equipment bonds and all

the moneys due and to become due thereon to be a charge and lien upon all of the property of said defendant, The Wabash, St. Louis and Pacific Railway Company, that is situated in the States of Ohio and Indiana, so far as the same was owned by the Toledo and Wabash Railway Company at the time the property and franchises of the company last named were transferred to the Toledo, Wabash and Western Railway Company, and will further adjudge that the lien of said bonds on the property last mentioned has priority over all liens of all kinds now existing upon the same, excepting the said mortgage executed by the Toledo and Illinois Railroad Company for the sum of nine hundred thousand dollars, and the said
60 mortgage executed by the Toledo and Wabash Railway Company for the sum of one million dollars, which two mortgages are liens on that part of the said property situated in the State of Ohio, and also excepting the said mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company for the sum of twenty-five hundred thousand dollars, and the said mortgage executed by the Wabash and Western Railroad Company for the sum of fifteen hundred thousand dollars, which two last mortgages are liens on that part of said property situated in the State of Indiana.

Plaintiff further prays that the defendant, The Wabash, St. Louis and Pacific Railway Company, may be decreed to pay the amount due to the plaintiff upon the said bonds herein, known as equipment bonds, which it holds and owns by a short day to be named by this court, together with all proper costs and expenses, and in default thereof that the railroad and all the property and the appurtenances thereto originally owned by the Toledo and Wabash Railway Company, situated in the States of Ohio and Indiana, and which is now in the possession of the said Wabash, St. Louis and Pacific Railway Company, may be ordered and decreed to be sold for the payment of said indebtedness to this plaintiff and the said bonds owned by it, subject, however, to said mortgage liens thereupon, which are prior to the lien of said plaintiff as the owner of said bonds known as equipment bonds, and that the money realized from such sale, after deducting all just allowance for the disbursements and expenses of such sale, be distributed in accordance with the equities of the parties entitled thereto, and that the said defendants above named or either of them may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said premises so decreed to be sold.

61 The said plaintiff further prays that this court will order, adjudge, and decree that the said bonds known as equipment bonds, held and owned by the plaintiff, shall be considered secured by the said consolidated mortgage; that an account be taken of all the debts secured by said consolidated mortgage and the amounts thereof and their relative priorities, and that the said Wabash, St. Louis and Pacific Railway Company may be decreed to pay the plaintiff and others whose debts or bonds are secured by said consolidated mortgage all arrears of interest now due or that may hereafter become due and payable, together with all costs and expenses

in this behalf incurred, and in default thereof that all and singular the property covered by and described in said consolidated mortgage, with the appurtenances, rights, and franchises in the said consolidated mortgage mentioned and described may be sold under a decree of this court, and that the proceeds thereof, after deducting all the costs and expenses of such sale, may be applied and distributed in accordance with the equities of the parties entitled to the same as ascertained by this court, and that the said defendants above named and all persons claiming under them may be forever barred and foreclosed of any and from all equity of redemption in and to the said mortgaged premises.

The plaintiff further prays that an injunction may be issued according to the form of the statute in such case made and provided, directing, commanding, and enjoining the said defendants and each of them from transferring, selling, incumbering, or in any way disposing of any of the property or franchises situated in the States of Ohio and Indiana which was transferred by the said Toledo and Wabash Railway Company to the said Toledo, Wabash and Western Railway Company at the time of the consolidation of the former company in the year 1865 with the other railroad
62 companies hereinbefore specified or any of the property mentioned in and covered by said consolidated mortgage and for other and proper relief.

LEE, BROWN & LEE,
*Att'ys for Plaintiff.*

STATE OF OHIO, } ss:
*Lucas County,* }

Henry E. Lee, being first duly sworn according to law, says that he believes the facts contained in the foregoing petition are true, and that he makes this affidavit because he is one of the attorneys for plaintiff in this action, and all of plaintiff's officers are now absent from Lucas county, Ohio.

HENRY E. LEE.

Sworn — before me and subscribed in my presence this the 28th day of April, 1883.

[SEAL.]

W. H. HARRIS,
*Notary Public, Lucas Co., O.*

EXHIBIT A.

Resolved, That for the purpose of providing further equipment and satisfying other requirements of the company, the president be authorized and directed to have prepared bonds of this company of denominations of one hundred, five hundred, and one thousand dollars each, or of such other denominations as may be deemed advisable, to an amount not exceeding six hundred thousand dollars; said bonds to bear date November 1st, 1862, and the principal made payable to a trustee or bearer in the city of New York, on the first day of May, 1883, and bear interest at seven per cent., payable semi-

annually at the same place, said interest to be represented by coupons, and the bonds so to be issued shall be executed in the usual manner and under the corporate seal, and they shall be convertible
63 into the common stock of the company at par at any time within five years from the date thereof, but shall not be entitled to a dividend for any time on which the holder thereof has received interest.

Resolved. That the executive committee be authorized to issue, sell, and dispose of the said bonds in such manner and upon such terms as they may deem for the best interests of the company.

EXHIBIT "B."

*Consolidated Mortgage.*

This indenture, made the first day of February, in the year of our Lord one thousand eight hundred and sixty-seven, between the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois, and having continuous lines of railroad in said States of the first part, and Isaac Knox and James R. Jesup of the city, county, and State of New York, of the second part.

Whereas the said company has been duly formed under the laws and consolidation statutes of the said several States of Ohio, Indiana, and Illinois by the consolidation of the stock, property, rights, and franchises and interests of the several companies, known as the Toledo, Wabash & Western Railway Company, the Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company;

And whereas at the time of such consolidation the property of said various companies was subject to certain bonded debts and mortgages created by said several companies or by other railroad corporations which, at the time of creation of said debts and mortgages, were the then owners of the property so consolidated;

And whereas all the funded debt of said company, parties of the first part, including that secured by said mortgages, as well
64 as that not secured by any mortgage, now amounts in the aggregate to the sum of thirteen million three hundred thousand dollars, besides interest;

And whereas said funded debt as it now exists is represented and made up as follows, to wit: First-mortgage bonds of the Toledo and Illinois Railroad Company, due as extended August 1st, 1890, for the sum of nine hundred thousand dollars, secured by a first mortgage on the part of the road of the parties of the first part running from Toledo to the westerly boundary of the State of Ohio, about seventy-five miles; bonds of the Toledo and Wabash Railway Company, due November 1st, 1878, for one million of dollars, secured by a second mortgage on that portion of the road of the parties of the first part last above named.

First-mortgage bonds of the Lake Erie, Wabash and St. Louis

Railroad Company, due as extended August 1st, 1890, for the sum of two million five hundred thousand dollars, secured by a first mortgage on the part of the road of the parties of the first part running entirely through the State of Indiana, about one hundred and sixty-eight miles; bonds of the Wabash and Western Railway Company, due November 1st, 1878, for one million five hundred thousand dollars, secured by a second mortgage on that portion of the road for the parties of the first part last named; first-mortgage bonds of the Great Western Railroad Company, due April 1st, 1868, for the sum of one million of dollars, secured by a first mortgage on the part of the said road of the parties of the first part running in the State of Illinois, from Decatur to the Illinois river at Naples, about one hundred miles; also bonds of the last-named company, due August 1st, 1865, for the sum of one million three hundred and fifty thousand dollars, secured by a mortgage on the part of the said road of the parties of the first part running in the State of
65 Illinois from the State line of Indiana on the west to the Illinois river, about one hundred and seventy-nine miles; there being at present outstanding of said bonds the sum of about twenty thousand dollars, the rest having been retired by a portion of the bonds next described; first-mortgage bonds of the Great Western Railroad Company, 1859, due August 1st, 1888, for the sum of two million five hundred thousand dollars, secured by a mortgage on that part of the road of the parties of the first part extending in the State of Illinois from Naples and Meredosia as its western termini to the boundary line between the States of Illinois and Indiana, about one hundred and seventy-nine miles.

The last-named bonds having been created to retire the aforesaid $1,000,000 and $1,350,000 of the Great Western Railroad Company bonds; bonds of the Great Western Railroad Company of 1859, due May 1st, 1893, for two million five hundred thousand dollars, secured by mortgage on that part of the road of the parties of the first part last named, about one hundred and seventy-nine; bonds of the Illinois and Southern Iowa Railroad Company due August 1st, 1882, for three hundred thousand dollars, secured by a first mortgage on that part of the road of the parties of the first part extended from said Clayton, to Carthage, in said State of Illinois, about thirty miles; bonds of the Toledo and Wabash Railway Company, due May 1st, 1883, for the sum of six hundred thousand dollars, and known as "equipment bonds."

Bonds of the Toledo, Wabash and Western Railway Company, due April 1st, 1871, for the sum of one million of dollars, and known as "sinking-fund bonds," the last two classes of bonds not being secured by any mortgage on any of the property of the parties of the first part; and whereas it has been deemed for the interest of the said parties of the first part, as well as for the benefit of the holders
66 of all said various classes of bonds, that the whole of the same should be consolidated into one and the same mortgage debt upon equitable principles;

And whereas the increasing freight business of the road of the

parties of the first part requires additional equipment to do the same;

And whereas it has been deemed expedient for the preservation of the bridges on the line of said road that the same should be covered, and that additional depot accommodations should be obtained, and that the road through its entire length should be fenced;

And whereas the expenses to be incurred for the above should be provided for by the creation of new capital;

And whereas, for the purposes aforesaid and for the objects herein stated, the said company, parties of the first part, has resolved to make and issue its bonds to the extent of fifteen million of dollars and to secure the payment of the same by a mortgage upon its entire property, and that of the amount of said bonds so to be made and issued there should be retained thirteen million three hundred thousand dollars to retire, in such manner and upon such terms as the directors of said company may from time to time prescribe, a like amount of the bonds of the various companies hereinbefore enumerated and described and representing the aforesaid funded debt, and that the balance of said bonds, to wit, one million seven hundred thousand dollars thereof, should be used to provide the said additional equipment and other improvements hereinabove mentioned and for such additional purposes as the said directors may deem advisable, and that all of said bonds should be for the sum of one thousand dollars each except two hundred, which should be for the sum of five thousand dollars each, and that all should bear date on the first day of February, A. D. 1867, and be-
67 come due and payable in forty years from their date, with interest at the rate of seven per cent. per annum, payable quarterly on the first days of May, August, November, and February in each year, in the city of New York, and to be all convertible into the common stock of said company at par, at the option of the holder, at any time within ten years from their date;

And whereas the said company has further resolved that a sinking fund of fifty thousand dollars per annum should be created payable to commissioners at the times and in the manner hereinafter stated and agreed and to be used by said commissioners for the purposes and in the manner as hereinafter directed by these presents;

And whereas it is the intention of these presents that it is hereby so declared that all of the said bonds to be issued shall stand equally secured by these presents without reference to the times of the actual issue of said bonds, and that said bonds shall be substantially in the form following, viz:

UNITED STATES OF AMERICA, *States of Ohio, Indiana, and Illinois.*

Toledo, Wabash and Western Railway Company.

*Consolidated Mortgage Sinking Fund Convertible Bond.*

Know all men by these presents, that the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidated statutes of the several States of

Ohio, Indiana and Illinois, acknowledge themselves indebted to Isaac H. Knox and James R. Jesup, of the city of New York, or bearer, in the sum of — dollars, lawful money of the United States of America, which sum the said company promises to pay to the said Isaac H. Knox and James R. Jesup, or the bearer thereof, on the first day of February, which will
68 be in the year one thousand nine hundred and seven, at their office or agency in the city of New York, with interest thereon at the rate of seven per centum per annum payable quarter yearly at their said office or agency in the city of New York, on the first day of May, August, November, and February in each year on the presentation and surrender of the coupon or interest warrants hereto annexed as they severally become due: And in case of the non-payment of any quarter-yearly installment of interest which shall have become payable and shall have been demanded, if such default shall continue for the space of six months after the maturity and demand of said installment, the principal of this bond shall become due in the manner and with the effect as provided in the deed of trust hereinafter mentioned, it is agreed between the said company and holder of this bond, that in case of any default in the payment thereof the said company hereby waives the benefit of any extension stay or appraisement laws now existing, or that may hereafter exist. And the said company further agrees that on the surrender of this bond, together with all outstanding coupons for interest thereon, and at any time within ten years from the date hereof the proprietor of this bond shall be entitled to the common stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw *pro rata* dividends from the maturity of the last interest due on said bonds at or immediately prior to the time of such conversion. And the said company further agree that they will pay the commissioners named in the said deed of trust, at the times and in the manner therein stated, the sum of fifty thousand dollars per year, for the purpose of being applied and used by such commissioners as a sinking fund for the payment and extinguishment of the principal of all the
69 bonds issued under and secured by said deed of trust; and that this bond shall be entitled to all the benefits of said sinking fund as therein provided. This bond shall pass by delivery or by transfer on the books of the company in the city of New York after a registration of ownership certified hereon by the transfer agent of the company. No transfer, except on the books of the company, shall be valid unless the transfer be to bearer, which shall restore transferability by delivery: but this bond shall continue subject to the successive registrations and transfers to bearer as aforesaid at the option of each holder; this bond is one of a series of fourteen thousand two hundred bonds, 14,000 of which number consecutively from one to fourteen thousand, inclusive are each for the sum of one thousand dollars: two hundred of which number consecutively from fourteen thousand and one to fourteen thousand two hundred inclusive, are each for the sum of five thousand dollars: and the whole series amounting in the aggregate to fifteen

millions of dollars and no more are all of like tenor, and all dated February 1st 1867, and are made and issued to retire all the various classes of bonds and securities now composing the funded debt of said company, and to provide means of additional equipment, and for the special improvement of the property of said company, and the payment of all said bonds is secured by an indenture of mortgage or deed of trust dated February 1st, 1867 made by said company to Isaac H. Knox and James R. Jesup of the city, county and State of New York, trustees conveying the railroad, equipment, franchises and property of said company, as therein described and stated subject only to such prior liens on any part of said property as therein stated. This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed thereon and duly signed by said trustees.

70 In witness whereof, the said company have caused their corporate sseal to be affixed hereto, and the same to be attested by the signatures of their president and secretary, this first day of February, one thousand eight hundred and sixty-seven.

[SEAL.] —— ——, *President.*
—— ——, *Secretary.*

*Indorsement on Bond.*

Payment on this bond, being one of a series of $15,000,000, is secured by a mortgage deed of trust dated February 1st, 1867, made by the Toledo, Wabash and Western Railway Company to Isaac H. Knox and James R. Jesup, trustees, which is recorded in the States of Ohio, Indiana, and Illinois.

—— ——,
—— ——,
*Trustees.*

Now, therefore, this indenture witnesseth: That the said parties of the first part, the better to secure the payment of the said bonds amounting in the aggregate to the sum of $15,000,000 and no more, with interest at the times and in the manner therein mentioned and set forth, as well as to secure the payment of the sinking fund as therein agreed, and for and in the consideration of the sum of one dollar by the parties of the second part in hand paid, the receipt whereof is hereby acknowledged, granted, bargained, sold, transferred, and set over, and by these presents do grant, bargain, sell, and set over, unto the said parties of the second part, their successors in the trust and assigns forever, all the right of way and railroad of the said parties of the first part extending from Toledo, in the State of Ohio, to and through the State of Indiana, and thence in the State of Illinois to Meredosia, with branch of said road to Naples, and from said Meredosia to Camp Point, in said State of Illinois, and also with branch of said road from Clayton, in said State, to the east

71 bank of the Mississippi river at Hamilton, in said State, as now made or as hereinafter may be made and as now used or as hereinafter may be used, together with all embankments, bridges, turn-outs, side tracks, structures, water tanks, and fixtures, shops,

engine or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all other things, real and personal, now owned or used or that hereafter may be owned or used by the parties of the first part in connection with the said railroad, and everything appertaining and appurtenant thereto, and all the franchises, powers, privileges, and chartered — other rights of the said Toledo, Wabash and Western Railway Company, together with all the property, real and personal, of said parties of the first part now acquired or to be hereinafter acquired at Quincy, in said State of Illinois, as also a certain contract made between the said company and the Chicago, Burlington and Quincy Railroad Company, dated October 26th, 1866, with all the rights and privileges secured by said contract to said parties of the first part and all other contracts; to have and to hold all and singular the above granted and described premises, with the appurtenances thereto belonging, unto the said parties of the second part, their successors in the trust and assigns forever, in trust, nevertheless, for the person or persons and bodies politic or corporate who now or shall become holders of the said bonds or any of them, subject to the terms and stipulations of said bonds and the laws of the said several States of Ohio, Indiana, and Illinois, and also subject to the possession, control, and management of the said company, parties of the first part, so long as the said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants contained in this indenture; and the said parties of the first part hereby covenant with the said parties of the second part and for the benefit of all those persons who shall
72 become holders of said bonds or any of them and their assigns that the said parties of the first part will pay all of said bonds, principal and interest, in the manner as stated in said bonds, and that they will also pay to the persons herein appointed as commissioners the sum of fifty thousand dollars per year for the purpose of being used and applied by said commissioners as a sinking fund for the payment and extinguishment of the principal of all of said bonds so to be issued and secured by this mortgage or deed of trust, and that said sum shall be paid to said commissioners in installments of twenty-five thousand dollars every six months on the first days of February and August in every year until and including the maturity of said bonds, and that the first payment of said installment shall be made on the first day of February, A. D. 1868, it being hereby understood and agreed that the said commissioners having the custody of said sinking fund shall be the president of said company, parties of the first part, and two members of the board of directors, one of which two members shall be changed every year; and it is hereby understood and declared that it shall be the duty of said commissioners above named and their successors in the trust in respect to all the monies that shall be paid them on account of said sinking fund, as hereinabove provided, as well as to all the accumulations thereof, to invest the same by purchasing the bonds secured by these presents on the best terms the same can be bought, but not at a rate exceeding the par value of said bonds and

five per cent. additional, and that the bonds so purchased shall be held by said commissioners or deposited by them with some trust company or other safe depository and be immediately registered, stamped, or endorsed as belonging to the said sinking fund, but shall remain in force, and the interest thereon shall continue
73 to be paid by the said parties of the first part, and the amount of such interest shall be added and applied as a part of the capital of the sinking fund hereby established and be used in the same manner as the semi-annual payments of twenty-five thousand dollars herein provided for, and that preparatory to such purchase of bonds said commissioners shall give twenty days' notice thereof in one or more daily papers published in the city of New York, and shall make the purchase at the lowest price or prices at which the bonds may be offered pursuant to such notice or at such lower price or prices as they may be able to obtain the same, but not exceeding the par value of said bonds and five per cent. additional, and in case the bonds cannot be purchased at the above limit within one month after said advertisement, then the said commissioners shall invest the said money in any of the bonds in the various corporations creating the funded debt of this company hereinbefore described, said last-named bonds to be purchased at the lowest market price, not exceeding the par of said bonds, and in case of inability to purchase said bonds at that limit the said commissioners shall invest said moneys in the bonds of the United States. The said commissioners, through the agency of the company and such other assistants as they may find it necessary to employ, shall have regular books of account and registers kept of all their proceedings, which, with all the papers and documents held by them, shall at all times be open to the inspection of the directors of the company. The receipt of said money by said commissioners shall impose upon them the same duty to perform this trust as if they had formerly signed an agreement to execute the same in accordance with the above directions.

And the said company, parties of the first part, for themselves, their successors and assigns, do hereby further covenant and agree to and with the said trustees, their successors and assigns, that in case default shall be made in any of the quarter-yearly in-
74 stallments of interest on any of the aforesaid bonds at the times and in the manner in the coupons or interest warrants therewith provided and shall have been demanded, and such default shall continue for the period of six months after the maturity and demand for payment of the said installments, or in any case default shall be made in the payment to the commissioners of the whole or any part of any semi-annual installment of the sinking fund as herein provided and such default shall continue for the period of six months, then and in either of such cases the principal of all the bonds secured by these presents shall become immediately due at the option of the holder or holders of a majority in interest of said bonds then outstanding, to be expressed by them in writing to said trustees, and in either of such cases of default in the non-payment of interest or non-payment of the sinking fund as well as in the case

of non-payment of the principal of said bonds when due, and such default in either of the three cases shall continue for said period of six months, upon the request of the holder or holders of a majority in interest of said bonds outstanding said trustees shall take actual possession of all and singular the property and effects, mortgages, and the agent or agents of said railway company actually in possession thereof are hereby ordered to give such possession to said trustees, parties of the second part, and the said trustees shall cause the said mortgaged premises or so much thereof as shall be necessary to pay and discharge the entire principal and interest of all of said bonds as may be then outstanding and unpaid, together with all expenses of sale, to be sold at public auction in the city of New York or in the city of Toledo, in the State of Ohio, or in the city of Lafayette, in the State of Indiana, or in the city of Springfield, in the State of Illinois, as they may be directed by the holder or
75 holders of a majority in interest of said bonds, giving at least sixty days' notice of the time, place, and terms of sale, and of the specific property to be sold by publishing the same in at least three newspapers of good circulation in said city of New York, and in the one newspaper published in said cities of Toledo, Ohio, Lafayette, Indiana, and Springfield, Illinois, or adjourn the said sale from time to time in the discretion of the trustees, and if so adjourned to make the sale without further notice at the time and place to which the same may be adjourned, and to execute to the purchaser or purchasers thereof on such sale a good and sufficient deed or deeds of conveyance in fee simple for the same, which shall be a bar against the parties of the first and second parts, their and each of their successors and assigns, and all persons claiming under them or either of them of all right, title, interest, claim, or demand in and to the said mortgaged premises or any part thereof, and out of the proceeds of such sale and the income next mentioned, after deducting just allowances and expenses, first, to pay, the interest in arrear on the said bonds secured by these presents and then outstanding, and then to pay the principal in full or ratably, so far as such proceeds and income shall suffice, and on and after such request to take possession and until such sale said trustees and their successors in the trust shall operate said road by such agents, receivers, and superintendents as they may appoint, and said trustees shall receive and collect all the incomes, revenues, and profits of the said railroad and mortgaged premises, and after defraying the necessary expenses of operating the same and all needed repairs thereto and the necessary taxes imposed thereon shall apply the net income so received to the payment of the interest and principal of said bonds in the order above expressed, and for the charges and expenses of so conducting the road and its needful repairs and taxes and the management of said business the said trustees shall be indemni-
76 fied out of the proceeds of the sale of the road, if needful, as well as out of its receipts and income, and in case any surplus shall remain in the hands of the said trustees or their successors the same shall be paid to the said parties of the first —, their successors or assigns, it being hereby expressly understood and agreed that in no

case shall any claim or advantage be taken by the parties hereto of the first part or any variation, appraisemsnt, stay, or extension laws now existing or that may hereafter exist, nor any injunction or stay of proceedings or any process to be applied for or obtained or used by or for them to prevent such entry or sale as aforesaid. It is understood and further agreed that any sale of the aforesaid property or any part thereof, whether made by the power therein granted or by judicial authority, the trustees, at the request of the holder or holders of a majority in interest of the bonds then outstanding secured by this instrument, shall be bid for and purchased or cause to be bid for and purchased the property so sold or any part thereof on behalf of all the owners of the bonds secured by this instrument and then outstanding in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of such property be sold, or, if all of it be sold, at a price not exceeding the whole amount of such bonds then outstanding, with the interest thereon, and necessary expenses of such sale; and it is understood and hereby declared that this mortgage is intended and shall be a first lien on the portions of the railroad and property of the parties of the first part extending in the State of Illinois from Clayton to Camp Point, the distance of about six miles, more or less, and from Carthage to the east bank of the Mississippi river, at Hamilton, as now built and as thereafter may be built, but is subject as to the rest of said railroad and property to prior liens thereon by mortgage,
77 amounting in the aggregate to the principal sum of eleven million seven hundred thousand dollars, the same being security for that amount of the funded debt of said company as aforesaid described and which is intended to be retired by the issue of a part of the bonds secured by these presents, and whenever all of said eleven million seven hundred thousand dollars of bonds shall have been retired these presents are intended to be and become a first lien on all the railroad and property of the parties of the first part.

It is further understood and agreed by and between the parties hereto that in case of the death or resignation of either of the trustees, or in the event of the incapacity of either of said trustees to act in the matter of the trust, the parties of the first part by their board of directors and the surviving or remaining trustee, as the case may be, shall elect a new trustee to supply the vacancy thereby created, who shall by such election have all the powers of the trustee whose place he may take, and in the case of the death or resignation or incapacity to act of both of said trustees or their successors, then — holder or the holders of a majority in interest of the then outstanding bonds secured by these presents shall with the said company elect or appoint new trustees, who on such election or appointment shall be invested with all the powers herein granted to the parties of the second part, and upon the death, resignation, or removal of the trustees herein appointed or of either of them or their or either of their successors all the estate, right, title, and interest in any trustee so dying, resigning, or being removed shall wholly cease and determine and the trustee so resigning or being re-

moved shall upon the written request of the new trustee so appointed execute and deliver a deed or deeds of conveyance to vest in such new trustee upon the trusts herein
78 expressed, all the property, right-, and franchises which may be at the time held upon the said trusts; and the parties of the first part do hereby covenant and agree with the said parties of the second part, their successors and assigns, for the benefit of those to whom said bonds shall be delivered and their assigns to make, execute, and deliver to the said parties of the second part, their successors and assigns, and, on their reasonable request, all such further assurances, convenances, and instruments in the law as counsel may reasonably devise and advise the more effectually to vest in the said parties of the second part, their successors and assigns, all and singular the premises hereby conveyed or intended to be for the purposes hereinbefore for that purpose mentioned or intended, and that the said trustees shall be liable, responsible, and accountable only for the exercise of reasonable diligence in the management of the trust and not one for the acts or negligence of the others and not for the acts of the agent or agents by them at any time appointed under these presents.

This conveyance is upon the express condition and limitation that upon the payment and satisfaction of the principal and interest of each and every of said bonds and upon the expenses and reasonable charges attending the execution of this trust the estate hereby granted shall immediately be revested, in law and fact, in said company, parties of the first part hereto, its successors and assigns, without entry or other act.

In witness whereof the said The Toledo, Wabash & Western Railway Company, the parties hereto of the first part, the day and the year first above written, caused their corporate seal to be hereto affixed and the same to be attested by their secretary and the name of their president to be assigned to these presents. The parties of
79 the second part hereto have also respectively signed and sealed the same the day and the year first above written.

A. BOODY, *President.*

[SEAL.] Attest: I. N. DRUMMOND, *Secretary.*

ISAAC H. KNOX. [SEAL.]

JAMES R. JESSUP. [SEAL.]

Sealed and delivered in the presence of—
CHARLES NETTLETON.
C. H. PIERCE.

STATE OF NEW YORK, *City and County of New York,* } *ss.:*

Be it rem-bered that on this twenty-third day of March, A. D. one thousand eight hundred and sixty-seven, before me, Charles Nettleton, a notary public of the State of New York, duly commissioned and sworn and dwelling in the said city and county of New York, personally appeared A. Boody, the president of the Toledo, Wabash & Western Railway Company, to me known to be a real

person, as such president, who, being by me duly sworn, did dispose and say that he resided in the city, county, and State of New York; that he was the president of the said Toledo, Wabash & Western Railway Company; that he knows the corporate seal of the said company; that the seal affixed to the foregoing indenture or instrument was such corporate seal; that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of said company, and that the said A. Boody acknowledged to me that he had executed the said indenture or instrument and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Toledo, Wabash and Western Railway Company for the uses and purposes therein expressed; and on this same day before me also personally appeared Isaac H. Knox and James R. Jesup, who are personally known to me to — the real persons whose names are subscribed to the foregoing indenture or instrument as trustees therein named, and
80 *and* severally acknowledged the signing and sealing of the foregoing indenture or instrument to be their voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal, this 23rd day of March, A. D. 1867.

[SEAL.] CHARLES NETTLETON,
*Notary Public in and for the City of New York.*

EXHIBIT "C."

This indenture, made the 1st day of April, in the year one thousand eight hundred seventy-three, between the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois, of the first part, and Isaac H. Knox and James R. Jessup, of the city, county, and State of New York, of the second part. Whereas a certain indenture of a mortgage bearing date the 1st day of February, on the year one thousand eight hundred and sixty-seven, and made by and between the parties thereto, the said party of the first part did mortgage all of its railroad extending from Toledo, in the State of Ohio, through the State of Indiana to Meredosia, in the State of Illinois, together with other premises in said mortgaged described, to the parties hereto of the second part as trustee, in order to secure the payment of certain consolidated mortgage sinking-fund convertible bonds of the said party of the first part to the amount all together of fifteen millions of dollars, as by reference to said indenture of mortgage will more fully and at large appear; and whereas of the said bonds to be made and issued under and secured by the said indenture of mortgage, thirteen million three hundred thousand dollars in amount were reserved for the
81 purpose of being used to retire a like amount of certain other bonds enumerated and described in the said indenture of mortgage, which were outstanding at the time said mortgage was given, and then constituted the funded debt of the said party of the first part; and whereas of the said funded debt *of* one million dol-

lars in amount has since matured and been retired, and for that purpose an equal amount of the said reserved bonds have been used, leaving now unused and reserved for the purpose of being used to retire the remainder of the said funded debt, the amount of twelve milllion three hundred thousand of said fifteen million dollars of bonds originally secured by the said indenture of mortgage; and whereas it is the desire of the parties hereto by more express and specific stipulations than are contained in said indenture of mortgage to give assurance to all persons whom it may in anywise concern that the said reserve bonds shall not nor shall any or either of them be used for any other purpose than the retiring of the said funded debt of some part thereof.

Now, therefore, this indenture witnesseth that the party of the first part, for and in consideration of the premises and of the sum of one dollar, lawful money of the United States, to it duly paid at or before the ensealing and delivery of these presents by the parties of the second part, and for divers other good causes and considerations, hath covenanted and agreed and by these presents doth covenant and agree with the parties of the second —, and with all persons whom it may in anywise concern, that the said party of the first part will not make or issue or attempt to make or issue any of the remaining twelve million three hundred thousand dollars of reserved bonds secured by the said indenture or mortgage, except for the purpose of and subsequent to or simultaneously with the retiring of an equal amount of the balance remaining of the said funded debt, so that when all of the said reserved bonds shall have
82 been issued the whole of the balance of the said funded debt will have been also extinguished and discharged, and whenever the said party of the first part shall call upon or request the said parties of the second part or their successors to sign the trustees' certificate endorsed upon any of the said reserved bonds the said party of the first — shall produce and exhibit to them at the same time, cancelled or for cancellation, an equal amount at least of the bonds constituting the balance of said funded debt, and that, without such production of the said last-mentioned bonds and the cancellation of the same, the parties of the second part shall not nor shall either of them nor the successor of either of them sign the trustees' certificate upon either of said reserved bonds; and the said parties of the second part do hereby each for himself covenant and agree they shall not sign the trustees' certificate upon either of the said reserved bonds except as hereinbefore provided; and the party of the first part doth further covenant and agree with the parties of the second part and their successors and with all persons whom it may in anywise concern that the covenants herein contained shal- be supplementary to and constitute a part of the said indenture of mortgage and be of the same effect to all intents and purposes as if they were inserted therein.

In witness the said party of the first part has caused its corporate seal to be hereto affixed and these pres-nts to be signed by its president and secretary, and the said parties of the second part have

hereunto set their hands and seals the day and year first above written.

[SEAL.] TOLEDO, WABASH & WESTERN RAILWAY COMPANY,
By A. BOODY, *President.*
JAMES R. JESUP.
ISAAC H. KNOX.

Sealed and delivered in the presence of—
ALEX. M. WHITE,
As to the signature of A. Boody, president.
CHARLES NETTLETON,
Of James R. Jesup and Isaac Knox.

83 Attest: WM. CORNEAU, *Secretary.*

Endorsed on said petition and filed therewith was a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

Lucas Common Pleas Court.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup, Isaac H. Knox, George I. Seney, John Humphreys, and David A. Lindley, Trustees.

Action for injunction and relief.

Clerk will issue summons for defendants to the sheriff of Lucas county, Ohio, returnable according to law.

LEE, BROWN & LEE,
*Att'ys for Pl'ff.*

Thereupon a summons in said cause was issued by the clerk of said court to the sheriff Lucas county, which summons is in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

To the sheriff of Lucas county:

You are commanded to notify the Toledo, Wabash and Western Railway Company, the Wabash Railway Company, the Wabash, St. Louis and Pacific Railway Company, James R. Jesup, and Isaac H. Knox, as trustees, and George I. Seney, trustee; John Humphreys and David A. Lindley, as trustees, that they have been sued by the Adelbert College of Western Reserve University in the court of common pleas of Lucas county, and that unless they answer by the 26th of May, A. D. 1883, the petition of the said plaintiff
84 against them filed in the clerk's office of the said court, such petition will be taken as true and judgment rendered accord-

ingly. You will make due return of this summons on the 7th day of May, A. D., 1883.

Witness R. C. Quiggle, clerk of said court, and the seal thereof, at Toledo, this 28th day of April, A. D. 1883.

[SEAL.] R. C. QUIGGLE, *Clerk*,
By N. HADNETT,
*Deputy Clerk.*

Said summons is endorsed as follows, to wit: Summons in action for injunction and relief. Lee, Brown & Lee, attorneys for plaintiff.

On the 7th day of May, 1883, said summons was filed with the sheriff's return thereon written in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

Received this writ April 28th, 1883, and pursuant to its command I summoned on the 5th day of May, 1883, the within-named defendant, The Wabash, St. Louis and Pacific Railway Company, by delivering a true and certified copy of this writ and of the endorsement hereon to I. E. Haviland, a regular freight agent of said company, at Toledo, in said county; the president, vice-president, secretary, treasurer, or other chief officer being not found in Lucas county, Ohio. The president, vice-president, or other chief officers of the Toledo, Wabash and Western Railway Company or the Wabash Railway Company and James R. Jesup, Isaac H. Knox, George I. Seney, John Humphreys, and D. A. Lindley were not found in Lucas county, Ohio.

JOHN HARBECK, *Sheriff*,
By J. E. HOWE, *Deputy.*

On the 29th day of October, 1883, being the 16th day of October term, 1883, of said court, an order in said cause was made, an
85 entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY } 22624.
*vs.*
TOLEDO, WAB. & W. R'Y CO. & *al.*

On motion to the court, leave is given the Wabash, St. Louis and Pacific Railroad Company to file answer in this cause in 30 days.

On the 24th day of November, 1883, defendant, by its attorney, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

*Answer of the Wabash, St. Louis and Pacific Railway Company.*

Lucas County Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup and Isaac H. Knox, as Trustees, and Solon H. Humphreys and David A. Lindley, Trustees, Defendants.

This defendant, for answer, says:

First. That it has no knowledge other than from the averments contained in the petition that the plaintiff is the owner and holder of the bonds or coupons described in the petition or either of them, and therefore denies the averments of the petition in that behalf.

Second. For a second answer this defendant says that it is not true, and it therefore denies, that the Wabash Railway Company held its property or any portion of it subject to the pretended liens which the plaintiff claims to hold thereon in behalf of or on
86 account of the bonds, coupons, or any of them which are described in the petition, and it denies that the Wabash, St. Louis and Pacific Railway Company holds its property or any part of it subject to any such pretended liens.

Third. For a third answer this defendant says that it is not true, and it therefore denies, that the Toledo, Wabash and Western Railway Company agreed to pay the equipment bonds of the Toledo and Wabash Railway Company as a part of the consideration for the purchase of the property of that company. It avers on the contrary that the Toledo and Wabash Railway Company did not in fact sell its property to the Toledo, Wabash and Western Railway Company, but by reason of certain proceedings in consolidation it became merged into that company, and as a separate corporation became thereby extinct and the unsecured debts thereof became the unsecured debts of the Toledo, Wabash and Western Railway Company and received no additional guaranty and underwent no change by reason of said merger.

Fourth. This defendant for further answer says that it is not true, as alleged in the petition, that the directors of the Toledo, Wabash and Western Railway Company never prescribed any terms of exchange of said bonds and never issued any of the consolidated bonds in exchange for the equipment bonds; but this defendant denies that the said directed ever neglected or refused to prescribe any terms of exchange or that said directors refused or neglected to do any other matter or thing which they were bound to do under said consolidated mortgage. On the contrary, this defendant avers that the said directors were never required or solicited by the holder or holders of said bonds to make an exchange for consolidated bonds,

nor were they ever requested by any such holder or holders to prescribe any terms for an exchange of said bonds, nor were they
87 ever notified by any holder of equipment bonds that any exchange would be made upon any terms whatever; and this defendant denies all of the averments of the petition that the holders of said equipment bonds stood ready and were willing to exchange the same for said consolidation bonds.

Fifth. The Wabash, St. Louis and Pacific Railway Company, further answering, denies that the Wabash Railway Company is identical with the Toledo, Wabash and Western Railway Company. On the contrary, it was a new, distinct, and separate organization, and that it was organized by virtue of the laws of Ohio, Indiana, and Illinois for the purpose of operating a railway in said several States and became the owner of the roadway, rolling stock, and property of the Toledo, Wabash and Western Railway Company by purchase at a judicial sale and by means of the conveyances recited in the petition; and it avers that the property so conveyed to it is subject to the liens and incumbrances which are described in said conveyances and no others; and it avers and charges that the pretended lien set up in plaintiff's petition is not one of said enumerated liens and neither the Wabash Railway Company nor this defendant had any notice thereof, nor was there any such lien upon such property, nor is there any such lien now upon the same or any parts or portions thereof.

Sixth. This answering defendant further answers and says that it is not true, and it therefore denies, that the Toledo, Wabash and Western Railroad Company by virtue of the execution of the consolidated mortgage gave any lien or right of equity of any kind upon its property or that it acknowledged such lien or secured to holders of equipment bonds any equitable right of payment, either as an unpaid portion of purchase-money or for any other reason or consideration whatever.

Seventh. This defendant further says upon information
88 and belief that before the time when plaintiffs so obtained possession and acquired title to said bonds in its petition named, if it ever really did acquire said title, the said bonds were owned by other persons not parties to this cause; that from the time of the execution of the said consolidated mortgage by the said Toledo, Wabash and Western Railway Company up to the time when the decree of foreclosure was rendered upon which said property was sold, as mentioned in plaintiff's petition, the several persons holding and owning said two bonds described in plaintiff's petition did not set up or assert or claim to be entitled to any lien upon any of the property of the Toledo, Wabash and Western Railway Company by reason of the ownership of said bonds, but, on the contrary, said persons up to July, 1874, continued to hold said bonds as subsisting obligations and wholly neglected and failed to set up any right or lien whatever by virtue of the same; that during the said period *of* the Toledo, Wabash and Western Railway Company executed the mortgage which was foreclosed by said decree and sold large amounts of bonds secured thereby, and that neither be-

fore nor at the time of the execution and recording of said mortgage nor from thence until the foreclosure of the same did any person or persons holding any of said equipment bonds set up or claim any lien upon the property of the said last-mentioned railway company because of said ownership; and this defendant further avers that from the time of the rendering of the decree of foreclosure aforesaid up to the time when plaintiff acquired possession of said bonds the holders of the same did not in any way set up any claim to a lien upon said property, legal or equitable, by virtue of said ownership; that during said last-mentioned period the Wabash Railway Company, which had acquired the property formerly owned by the Toledo, Wabash and Western Railway Company through and under said foreclosure sale, executed on all of
89 said property the said Seney mortgage, and also a subsequent mortgage in which said Solon Humphreys and David A. Lindley were named as trustees. The said mortgages were executed to secure bonds and other obligations — a large amount, many of which are still outstanding and still unsatisfied; that said bonds and obligations were sold and negotiated and are now owned by many persons who are not parties to this cause; that from the time of said foreclosure sale up to the time of the commencement of this suit neither the plaintiff nor any former holder of the bonds placed in judgment as aforesaid set up any lien upon any part of said property as security for said bonds, but on the contrary it avers that when said last-mentioned mortgages were being executed and the bonds and obligations secured thereby sold, and while this defendant was being formed by the consolidation of the said Toledo, Wabash and Western Railway Company with other companies, the holders of said bonds remained wholly quiescent and took no steps whatever to assert the lien which they now allege, although well knowing the execution of said mortgage and the sale of said bonds; and this defendant further avers that the trustees named in said several mortgages hereinbefore mentioned and the several persons purchasing the bonds and obligations secured thereby at the time when they acquired an interest under said mortgages either as trustees or purchasers had no notice of the said pretended lien now claimed by the plaintiff, but on the contrary the said George I. Seney, trustee, and the said Humphreys and Lindley, when they became trustees as aforesaid, did so under the belief that if the holders of the bonds so placed in judgment ever claimed any lien said claim was not only unfounded, *but had bonds so placed in judgment ever claimed any lien said claim was not only unfounded,* but had been long before abandoned; and this defendant avers upon information and belief that the then holders of the bonds
90 which the plaintiff now claims to own tacitly permitted the execution of the mortgages and sale of bonds secured thereby, raising no claim or lien, although aware of such proceedings; and this defendant now and again denies that any such lien as plaintiff now claims ever existed in the law or in equity, and avers that if any equities existed on the part of the holders of said bonds such equities have long since lapsed and such holders and the

plaintiff and all others claiming through or under them are by the facts aforesaid estopped from asserting such lien. This defendant, moreover, avers upon information and belief that large amounts of its capital stock have been repeatedly sold and transferred to persons who relied upon the claims of said bonds to a lien upon the property of this defendant as abandoned, and who did not reckon the amount of said bonds among the liabilities of this defendant, many of such transfers being made within the knowledge of persons who then owned some of the same series of bonds which plaintiff now claims to own, and that such transfers were made under circumstances in the conduct of such persons as induced such purchasers to remain under the impression that no lien in favor of said bonds would be thereafter asserted. Defendant further avers that if any such lien ever existed in law or equity in favor of the holders of the equipment bonds now claimed by the plaintiff, the same was subordinate to the several mortgage liens hereinbefore mentioned, as no mortgage or other instrument in writing executing such supposed lien for security of said equipment bonds was ever sealed, acknowledged, or recorded as required by the laws of Ohio to so operate as to execute such lien.

J. R. OSBORN,
*Att'y for the Wabash, St. Louis & Pacific Railway Co.*

91 STATE OF OHIO, } *ss:*
*County of Lucas,* }

John R. Osborn, being duly sworn, says that he — one of the attorneys for the Wabash, St. Louis and Pacific Railway Company, and is authorized to make this affidavit in its behalf, and that the statements of the foregoing answer are true as he believes.

JOHN R. OSBORN.

Sworn to before me and subscribed in my presence this 22nd day of November, A. D. 1883.

[SEAL.] ALEXANDER L. SMITH,
*Notary Public in and for Lucas County, Ohio.*

On the 21st of May, 1888, being the 41st day of the April term, 1888, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE T., W. & W. R'Y CO. } 22624.

On motion to the court, leave is given to file amended answer in this case by June 4th, 1888.

On the 4th day of June, 1888, being the 52nd day of the April term, 1888, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY CO. } 22624.

On motion to the court, leave is given to file amended answer in 10 days from June 4, 1888.

On the 8th day of June, 1888, defendant, by its attorneys, filed in said court an amended answer in said cause; which amended
92 answer is in the words and figures following, to wit:

Court of Common Pleas of Lucas Co.

*Amended Answer of the Wabash, St. Louis and Pacific Railway Company.*

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company; James R. Jesup, and Isaac H. Knox, as Trustees, and Solon Humphreys and Daniel A. Lindley, as Trustees, Defendants.

This defendant, by leave of court first had, now files its amended answer to the petition of the plaintiff and says:

First. That it has no knowledge other than from the averments contained in the petition that the plaintiff is the owner and holder of the bonds or coupons described in the petition or either of them, and therefore denies the averments of the petition in that behalf.

Second. For a second answer this defendant says that it is not true and that it therefore denies that the Wabash Railway Company held its property or any portion of it subject to the pretended liens which the plaintiff claims to hold thereon in behalf of or on account of the bonds, coupons, or any of them which are described in the petition, and it denies that the Wabash, St. Louis and Pacific Railway Company holds its property or any property or any part of it subject to any such pretended lien.

Third. For a third answer this defendant says that it is not true and it therefore denies that the Toledo, Wabash and Western Railway Company agreed to pay the equipment bonds of the Toledo & Wabash Railway Company as a part of the consideration for the purchase of the property of that company. It avers, on the
93 contrary, that the Toledo, Wabash Railway Company did not, in fact, sell its property to the Toledo, Wabash and Western Railway Company, but by reason of certain proceedings in consolidation it became merged into that company, and as a separate corporation became thereby extinct, and the unsecured debts thereof became the unsecured debts of the Toledo, Wabash and Western

Railway Company, and received no additional guaranty and underwent no change by reason of said merger.

Fourth. This defendant, for further answer, says that it is not true, as alleged in this petition, that the directors of the Toledo, Wabash and Western Railway Company never prescribed any terms of exchange of said bonds and never issued any of the consolidated bonds in exchange for the equipment bonds, but this defendant denies that the said directors ever neglected or refused to prescribe any terms of exchange or that said directors refused or neglected to do any other matter or thing which they were bound to do under said consolidated mortgage. On the contrary, this defendant avers that the said directors were never required or solicited by the holder or holders of said bonds to make an exchange for consolidated bonds, nor were they ever requested by any such holder or holders to prescribe any terms for exchange of said bonds, nor were they ever notified by any holder of equipment bonds that any exchange would be made upon any terms whatever; and this defendant denies all of the averments of the petition that the holders of said equipment bonds stood ready and were willing to exchange the same for said consolidation bonds.

Fifth. The Wabash, St. Louis and Pacific Railway Company, further answering, denies that the Wabash Railway Company is identical with the Toledo, Wabash & Western Railway Company. On the contrary, it was a new, distinct, and separate organization,
94 and that is was organized by virtue of the laws of Ohio, Indiana, and Illinois for the purpose of operating a railway in said several States and became owner of the roadway, rolling stock, and property of the Toledo, Wabash and Western Railway Company by purchase at a judicial sale and by reason of the conveyances recited in the petition; and it avers that the property so conveyed to it is subject to the liens and encumbrances which are described in said conveyances and no others; and it avers and charges that the pretended lien set up in plaintiff's petition is not one of said enumerated liens, and neither the Wabash Railway Company nor this defendant had any notice thereof, nor was there any such lien upon such property, nor is their any such lien now upon the same or any parts or portion thereof.

Sixth. This answ-ring defendant further answers and says that it is not true and it therefore denies that the Toledo, Wabash and Western Railway Company, by virtue of the execution of the consolidated mortgage, gave any lien or right of equity of any kind upon its property, or that it acknowledged such lien or secured to holders of equipment bonds any equitable right of payment either as an unpaid portion of purchase-money or for other reason or consideration whatever.

Seventh. This defendant further says upon information and belief that before the time when plaintiff so obtained possession and acquired title to said bonds in its petition named, if it ever really did acquire said title, the said bonds were owned by other persons not parties to this cause; that from the time of the execution of the said consolidated mortgage by the said Toledo, Wabash and Western Railway Company up to the time when the decree of foreclosure

was rendered upon which said property was sold, as mentioned in plaintiff's petition, the several persons holding and owning said two bonds described in plaintiff's petition did not set up or assert
95 or claim to be entitled to any lien upon any property of the Toledo, Wabash and Western Railway Company by reason of the ownership of said bonds, but, on the contrary, said persons, up to July, 1874, continued to hold said bonds as subsisting obligations and wholly neglected and failed to set up any right of lien whatever by virtue of the same; that during the said period the Toledo, Wabash and Western Railway Company executed the mortgage, which was foreclosed by said decree, and sold large amounts of bonds secured thereby, and that neither before nor at the time of the execution and recording of said mortgage nor from thence until the foreclosure of the same did any person or persons holding any of said equipment bonds set up any claim or lien upon the property of the said last-mentioned railway company because of said ownership; and this defendant further avers that from the time of the rendering of the decree of foreclosure aforesaid up to the time when plaintiff acquired possession of said bonds, the holders of the same did not in any way set up any claims to a lien upon said property—legal or equitable—by virtue of said ownership; that during said last-mentioned period the Wabash Railway Company, which had acquired the property formerly owned by the Toledo, Wabash and Western Railway Company, through and under said foreclosure sale, executed all of said property—the said Seney mortgage—and also a subsequent mortgage, in which said Solon Humphreys and David A. Lindley were named as trustees; that said mortgages were executed to secure bonds and other obligations to a large amount, many of which are still outstanding and still unsatisfied; that said bonds and obligations were sold and negotiated and are now owned by many persons who are not parties to this cause; that from the time of said foreclosure sale up to the time of the commencement of this suit neither the plaintiff nor any former holder of the bonds placed in judgment as aforesaid set up any lien upon any part of said prop.
96 as security for said bonds, but, on the contrary, it avers that when said last-mentioned mortgages were being executed and the bonds and obligations secured thereby sold, and while this defendant was being formed by the consolidation of the said Toledo, Wabash and Western Railway Company with other companies, the holders of said bonds remained wholly quiescent and took no steps whatever to assert the lien which they now allege, although well knowing the execution of said mortgage and the sale of said bonds; and this defendant further avers that the trustees named in said several mortgages hereinbefore mentioned and the several persons purchasing the bonds and obligations secured thereby at the time when they acquired an interest under said mortgages, either as trustees or purchasers, had no notice of the said pretended lien now claimed by the plaintiff, but, on the contrary, the said George I. Seney, trustee, and the said Humphreys and Lindley, when they became trustees as aforesaid, did so under the belief that if the

holders of the bonds so placed in judgment ever claimed any lien said claim was not only unfounded, but had been long before abandoned; and this defendant avers upon information and belief that the then holders of the bonds which the plaintiff now claims to own tacitly permitted the execution of the mortgages and sale of bonds secured thereby, raising no claim of lien, although aware of such proceedings; and this defendant now and again denies that any such lien as plaintiff now claims ever existed in law or in equity, and avers that if any equities exist on the part of the holders of said bonds such equities have long since lapsed, and such holders and the plaintiff and all others claiming through or under them are by the facts aforesaid estopped from asserting such lien. This defendant, moreover, avers upon information and belief that large amounts of its capital stock have been repeatedly sold and
97 transferred to persons who relied upon the claims of said bonds to a lien upon the property of this defendant as abandoned and who did not reckon the amount of said bonds among the liabilities of this defendant, many of such transfers being made within the knowledge of persons who then owned some of the same series of bonds which plaintiff now claims to own, and that such transfers were made under circumstances in the conduct of such persons as induced such purchasers to remain under the impression that no lien in favor of said bonds would be thereafter asserted. Defendant further avers that if any such lien ever existed in law or equity in favor of the holders of the equipment bonds now claimed by the plaintiff, the same was subordinate to the several mortgage liens hereinbefore mentioned, as no mortgage nor other instrument in writing executing such supposed lien for security of said equipment bonds was ever sealed, acknowledged, or recorded, as required by the laws of Ohio, to so operate as to execute such lien. For a further answer this defendant says that the plaintiff ought not to have or maintain this said action, because it shows that prior to the commencement of this action, to wit, on or about the 31st day of May, 1878, one Benjamin F. Ham and others began a suit in the United States circuit court for the district of Indiana as holders of said equipment bonds on behalf of themselves and all other bondholders similarly situated who might desire to come into the said suit, thereby meaning all the holders of equipment bonds issued by said Toledo and Wabash Railway Company, and in said cause seeking to have said equipment bonds declared a lien upon all the property of the said Toledo and Wabash Railway Company which passed into the hands of the consolidated companies described in plaintiff's petition, and to have the said lien enforced upon all of the property within the States of Ohio and Indiana, being the
98 same property described in plaintiff's petition and upon which the plaintiff seeks to assert a lien in this cause; that in said cause thus begun as aforesaid the Wabash Railway Company, the Toledo, Wabash and Western Railway Company, the Wabash, St. Louis and Pacific Railway Company, Isaac H. Knox, and James R. Jesup, as trustees, were made defendants and duly served with processes therein; that in said cause the said complainants set forth all

the facts that are now set forth in plaintiff's petition in this cause, and claimed thereon the right to subject the said property properly belonging to the Toledo and Wabash Railway Company to the lien of said equipment bonds held by them and also held by other parties and then outstanding; that the defendants above named joined issue with the complainant in said cause, as will fully appear from a transcript of said record, which the defendant- will produce upon the trial of this cause; that said cause was upon said issues fully tried in said circuit court of the United States, which thereupon held that all of said equipment bonds constituted an equitable lien upon said property of the Toledo and Wabash Railway Company within the States of Ohio and Indiana, and ordering said property to be sold for the satisfaction of the lien of said equipment bonds and provision to be made for the application of the proceeds of the payment of said bonds; that an appeal was thereupon taken by the defendants to the Supreme Court of the United States, which, upon consideration thereof, reversed said order and decree of the said circuit court, and said cause was thereupon retried by said circuit court, and on said retrial a decree was entered by said circuit court holding that said described property was not subject to the lien of said equipment bonds; that in said cause said court had jurisdiction of the subject-matter and of the parties to said judgment of the circuit court of the United States entered on the 7th day
99 of May, 1888; is a complete adjudication of all the questions and matters relating to the lien of said equipment bonds that are sought to be adjudicated in this cause and is a bar to the proceedings on behalf of the plaintiff in this cause.

For further and additional defense this defendant says that on or about the 29th day of May, 1884, the circuit court of the United States for the northern district of Ohio, western division, and for the district of Indiana, by orders duly entered thereon in foreclosure proceedings brought on behalf of the trustees of mortgages given by said Wabash, St. Louis and Pacific Railway Company, duly appointed receivers, who took possession of all the property described in plaintiff's petition, and that said United States circuit courts, through said receivers, have been and continued in possession and control of said property down to the present time; that subsequent to the appointment of said receivers the trustees of mortgagees, prior to the alleged lien of said equipment bonds, *they* began proceedings for foreclosure in said United States circuit courts, and said United States circuit courts retain possession and jurisdiction of said property under said foreclosure proceedings and are proceeding to foreclose the prior mortgages described in plaintiff's petition within the States of Ohio and Indiana, and through the officers of said court are in possession, custody, and control and they have exclusive jurisdiction of said property, and said plaintiff should be remitted to the proceedings in said United States circuit court and have his alleged claim adjudicated and determined therein.

By way of further answer to the petition of the plaintiff this defendant says that it denies that all the property comprising the line of railroad within the State of Ohio was property that was owned

by the Toledo and Wabash Railway Company; on the con-
100 trary, it avers that a large amount of the property now in the possession of the Wabash, St. Louis and Pacific Railway Company or its successor is property that has been purchased since the date of the consolidation of the Toledo, Wabash Railway Company described in plaintiff's petition. Wherefore it asks to be dismissed with its costs.

OSBORN & SMITH,
*Attorneys for Defendant.*

THE STATE OF OHIO, } ss:
*County of Lucas,* }

John R. Osborn, being duly sworn, says that he is one of the attorneys for the Wabash, St. Louis and Pacific Railway Company and is authorized to make this affidavit in its behalf and the statements of the foregoing answer are true as he believes.

J. R. OSBORN.

Sworn to before me and subscribed in my presence this 8th day of June, A. D. 1888.

[SEAL.] LOUIS G. RICHARDSON,
*Notary Public in & for Lucas County, Ohio.*

On the 24th day of December, 1888, being the 78th day of the September term, 1888, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY }
*vs.* } 22624.
THE TOLEDO AND WABASH AND WESTERN R'Y CO. *et al.* }

This day came the parties, by their attorneys, and thereupon, on its application therefor, the plaintiff is given leave to file a supplemental and amended petition herein within five days and in and by such petition to make a new party herein, to wit, James Compton.

101 On the 27th day of December, 1888, plaintiff, by its attorneys, filed in said court a supplemental and amended petition in said cause; which supplemental and amended petition is in the words and figures following, to wit:

*Supplemental & Amended Petition.*

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Co., The Wabash, St. Louis & Pacific Railway Co., James R. Jesup & Isaac H. Knox, as Trustees, and George I. Seney, Trustee; John Humphreys & David A. Lindley, as Trustees, Defendants.

By leave of the court had and obtained the plaintiff now comes and, in addition to and in correction of the matters and things contained in its original petition and by way of amendment thereof, says—

That prior to the commencement of this action one James Compton, as plaintiff, began his certain civil action in this court against the same defendants above stated as defendants herein, save and except that in said action the said defendant, Humphreys, was correctly designated as Solon Humphreys, and said cause was pending in this court at the time of the commencement of this action; that the general purpose of said action was the recovery by plaintiff of a final judgment and decree establishing plaintiff's right to enforce as a lien about $150,000 par value of the series of bonds known as equipment bonds against the Toledo, Wabash & Western railway property within the States of Ohio and Indiana, said series of bonds being the same in kind and of the same series as the bonds set forth and described by plaintiff in its action herein; that after
102 final hearing was had in this court in said cause and from the final judgment and decree therein rendered by this court an appeal was taken from this court in said cause to the district court of Lucas county, Ohio, and such proceedings were had in said cause in said district court as that the same was duly reserved for decision in the supreme court of the State of Ohio, and the same was therein thereafter duly docketed pursuant to such reservation; that in said supreme court said cause continued to be pending until the final judgment and decree was therein rendered by said court on or about the — day of ——, A. D. 1888, and the said cause in and by said final judgment and decree was remanded by said supreme court to this court for execution on the footing of such final judgment and decree and for other purposes; that in pursuance of said remanding order said cause has since been duly remanded to this court, and the same now is pending herein for execution of said final judgment and decree and for other purposes; that in and by said final judgment and decree it was amongst other things in substance found and adjucicated by said supreme court that the said series of $600,000 of equipment bonds so called became and was prior to the commencement of said action a valid lien against the

property of said line of railway within the States of Ohio and Indiana and subject, however, to two certain mortgage liens of $1,000,000 and of $900,000 respectively, which are named and set forth in said Compton's petition, and also in the petition of the plaintiff herein, and ordering that so much of said line of railway property as lies within the State of Ohio should be appraised, advertised, and sold by sheriff of Lucas county at a rate not less than two-thirds the amount of the appraised value thereof; that said final judgment and decree was by a proper remanding order
103 duly certified and transmitted to this court from said supreme court, which said final judgment and decree so remanded are now of record in this court as provided by law; that under and pursuant to the provisions of the same the said James Compton did, on or about the — day of ——, A. D. 1888, cause an order of sale to issue upon said final judgment and decree out of this court to the sheriff of Lucas county, Ohio, and thereupon said last-mentioned officer did call an inquest of three appraisers to make appraisement of the cash value of the said railway property within the State of Ohio subject to the said two mortgage liens aforesaid, which said inquest was duly made, and the appraisal thereby reached was duly reported to said sheriff by said appraisers and by him filed in the office of the clerk of this court, wherein the same yet remains; that thereupon and without further proceedings under said order of sale said sheriff returned the same into this court by the order of the said James Compton and no further or supplemental order of sale has been issued therein; that the amount of said appraisal is subject as aforesaid in the sum of —, and that the amount of said equipment bonds held by said Compton, principal and interest, was found by said supreme court to be in the sum of $339,000, the same to bear interest until paid from the — day of ——, A. D. 18—.

That plaintiff is informed and believes it to be true that said James Compton in his said suit and under and by virtue of said final judgment and decree therein so remanded to and of record in this court is about to further proceed in the execution of said final judgment and decree with the sale of said railroad property and to appropriate the proceeds thereof to the payment of the costs of his said action and of his said final judgment and decree in full; that by reason of the averments contained in the original
104 petition of plaintiff herein it is entitled to have the decree of this court declaring the amount of its said bonds a lien upon said railroad property concurrent and coequal with the lien of said Compton thereon, and that plaintiff has a right in equity to share with said Compton ratably in the proceeds from the sale of said railway property. Plaintiff further says that it withdraws its averment, admission, and concession contained in its original petition that the said mortgage upon said railway property in the aggregate sum of $900,000 is a valid mortgage and prior to the lien of plaintiff upon said railway property, and on the other hand it avers that by reason of its misinformation and incorrect understanding at the time of the filing of its original petition herein it falsely and incorrectly supposed and believed said mortgage to be valid and en-

forceable against said railway property and to be prior to the lien of the plaintiff and other equipment bondholders, but it now avers that it is informed and believes and charges the fact to be that said mortgage is invalid, that it is barred by lapse of time, and is no longer a lien on said railway property or on any part thereof or in any sum whatsoever. Whereupon plaintiff prays for relief as in its original petition, save and except that it here prays that its lien upon said railway property in the States of Ohio and Indiana may be declared prior to all liens thereon, save and except said mortgage lien of $1,000,000, and especially that said mortgage for $900,000 be declared no longer a lien thereon; and plaintiff also further prays that the said James Compton may be made a party defendant hereto, that in case said railway property shall be sold under and pursuant to said final judgment and decree in favor of said Compton rendered by said supreme court of Ohio that the proceeds of such sale be held and retained in and by this court, subject to dis-
105 tribution to this plaintiff on its said lien held by said bonds owned by it concurrantly and coequally with said James Compton, and if it shall become necessary so to do that an order be made consolidating this cause with said cause of James Compton against said Toledo, Wabash and Western Railway Company and others, and if it shall become necessary plaintiff prays that the court will make full inquiry and finding as to any and all liens upon said railway property held by persons or parties not now formal parties in either this cause or in said cause brought by said Compton, and make full adjudication in respect thereto touching both said railway property and the proceeds to arise from the sale of the same, to the end that said railway property when it shall be sold shall pass free and clear of all encumbrances to the purchaser thereof, with the view of making the same bring the largest possible price at such sale, and for other and full relief.

LEE & BROWN,
*Att'ys for Pl'ff.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

John C. Lee, being duly sworn, says that he believes the facts alleged in the foregoing amended petition are true, and that he makes this affidavit because the plaintiff is a corporation having its principal office at Cleveland, Ohio, and affiant is one of the attorneys of plaintiff in this action.

JOHN C. LEE.

Sworn to before me and subscribed in my presence this 24th day of December, 1881.

[SEAL.] W. H. A. READ,
*Notary Public, Lucas Co., Ohio.*

On the 4th day of January, 1889, being the 86th day of the September term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

106 THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY CO., THE TOLEDO, WABASH & WESTERN R'Y CO., *et al.* } 22624.

This day came the plaintiff and thereupon came William F. Redmond, John B. Manning, David Kohn, William Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Brothers; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnston, Charles E. Th-rne, Jane Moir, Gustavus Roilin, and Edward A. Rollins, partners under the firm name of Rollins and Company; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, Geo. B. Mead, and Walter M. Atkinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence M. Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira and made application to the court to be made parties defendant herein with leave to file answer and cross-petition, and thereupon, the plaintiff consenting thereto, it was ordered and adjudged that the application aforesaid be granted and that said application be admitted as parties defendant herein, and they have leave as such to file answer and cross-petition herein for the benefit of themselves alone or also for the benefit of other persons and corporations who may not have joined them in making such application and to have and enjoy all the rights, privileges, and benefits of parties defendant herein.

On the 5th day of January, 1889, defendants, by their attorney, filed in said court an answer and cross-petition in said cause; which answer and cross-petition is in the words and figures following, to wit:

107 STATE OF OHIO, *Lucas County.*

*Answer and Cross-Petition.*

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WAB-SH, ST. LOUIS & PACIFIC RAILWAY COMPANY, The Toledo, Wabash and Western Railway Company, The Wabash Railway Company, *et al.* } 22624.

Now come William F. Redmund, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F.

Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins, and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, George B. Meade and Walter M. Atkinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, and, by leave of the court here first had and obtained, appear in the above-entitled cause and file herein this their answer and cross-petition, and, by way of such answer say that they admit all and singular the averments of the petition and the supplemental and amended petition filed in this cause not hereinafter denied or modified and except any statement thereof relating to the validity and amount of liens upon the railway property described in the said petition and therein stated or admitted to be prior in date or superior to the lien of the equipment
108 bonds issued by the Toledo and Wabash Railway Company, described in the said petition and whereof the said Adelbert College is therein shown to be the holder of two bonds and these defendants, as hereinafter stated, are the holders of a large number, and all averments of priority or superiority of lien of any mortgage to the lien of the said equipment bonds contained in said petition are denied; and by way of cross-petition these cross-petitioners, not only in their own behalf, but for and on behalf of all holders of equipment bonds issued by the Toledo and Wabash Railway Company of the issue and class described in the said petition who may appear and unite — the prosecution of this cross-petition and contribute to the expenses thereof, aver that they are holders and owners of equipment bonds issued by the said Toledo and Wabash Railroad Company in the year of 1862, of the issue and class described in the said petition, the total issue of which amounted, at the par value thereof, to the sum of six hundred thousand dollars ($600,000), with coupons thereon, payable semi-annually, at the rate of seven (7) per cent., the principal whereof and of each of said bonds being payable on the first day of May, 1883, of one of which bonds amounting at the par value thereof to the sum of five hundred dollars ($500) a true copy is contained in said petition, and that their several holdings of said bonds are, exclusive of interest, as follows: William F. Redmond, ten thousand dollars ($10,000); John B. Manning, fourteen thousand dollars ($14,000); David Kohn, William M. Kohn, and Edward Popper, partners as Kohn, Popper and Company, eighteen thousand dollars ($18,000); James M. Ham and Benjamin F. Ham, partners as Ham Bros., two thousand dollars ($2,000); Israel M. Simon, five thousand dollars ($5,000); Edward H. Litchfield, twenty-five thousand dollars ($25,000); Irving D. Ferry, seven thou-
109 sand dollars ($7,000); John S. A. Wittke, twenty-seven thousand five hundred dollars ($27,500); James M. Ham, one thousand five hundred dollars ($1,500); Henry W. Smith, one

thousand dollars ($1,000); Charles S. Webb, five thousand dollars ($5,000); Jane A. Sullivan, three thousand dollars ($3,000); Ella R. Johnson, five thousand dollars ($5,000); Charles E. Thorne, one thousand dollars ($1,000); James Moir, five thousand dollars ($5,000); Gustavus Rollins and Edward A. Rollins, partners as Rollins and Co., four thousand five hundred dollars ($4,500); Eugene E. Bishop, one thousand dollars ($1,000); Frederick Hubbard, eight thousand dollars ($8,000); William G. Creamer, ten thousand dollars ($10,000); George B. Mead, five thousand five hundred dollars ($5,500); George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased, five thousand five hundred dollars ($5,500); John W. Alling, one thousand dollars ($1,000); E. Kellogg Beach, two thousand five hundred dollars ($2,500); Clarence Morfit, one thousand dollars ($1,000); James Walker, one thousand dollars ($1,000); Vassar Bros. Hospital, two thousand dollars ($2,000); Josephine L. Cadmus, ten thousand dollars ($10,000); Preston Wing, four thousand dollars ($4,000); Mary L. Oliveira, four thousand dollars ($4,000).

To each and all of which bonds there attached *of* all the coupons thereof, beginning with the coupons which matured on the first day of May, 1875, and thereafter maturing and accrued semi-annually until the maturity of said bonds on May 1, 1883, being in all seventeen (17) semi-annual installments of interest of three and one-half ($3\frac{1}{2}$) per cent. each, and they aver that all said bonds and the coupons thereof described as aforesaid are severally due to them as aforesaid, with interest thereon from the date of maturity of the said bonds at the rate of seven per cent. per annum, and with
110 interest on the coupons aforesaid from the date of the several maturities of the said coupon at the rate of six per cent. per annum until the present time, and will continue to bear interest as aforesaid until judgment shall have been rendered thereon, as hereinafter prayed for, and as to the principal of said bonds so held by them as aforesaid, being in all the sum of one hundred and ninety thousand dollars, said judgment will bear interest at the rate of seven per centum per annum until paid; and these cross-petitioners further state that not only the equipment bonds enumerated and described in the petition of the plaintiff as owned by it and in this answer and cross-petition as owned by them were issued by the said Toledo and Wabash Railway Company, but also the residue of the whole issue provided for as described in the said petition by the resolution of the directors of the said company, to the total amount of six hundred thousand dollars ($600,000), with coupons thereon, as provided for and contemplated in said resolution and as described in said petition, and that said bonds were negotiable in form and were in all respects as shown by the specimen thereof in the said petition copied, each of said bonds being payable to the bearer thereof, and that said bonds were sold by said company to divers and sundry parties, purchasers thereof, in good faith and before maturity, for a total sum realized by said Toledo — Wabash Railway Company of five hundred and thirteen thousand and forty-six and $\frac{13}{100}$ dollars ($513,046.13), which said company appropriated to

its own use; and these cross-petitioners further state that, besides the bonds held by them as aforesaid and the two bonds described in the petition held by the plaintiff, one James Compton, a resident of the District of Columbia, claims to be the holder and owner of one hundred and fifty (150) of said bonds upon which he has
111 recovered judgment for his own benefit and not for the benefit of any other bondholder for a sale of so much — said railway as is within the State of Ohio, with its accretions and additions, and that there are a large number of the other bonds of the same class and issue *not* outstanding in the hands of divers and sundry persons, partnerships, and corporations unknown to these cross-petitioners, in whose behalf, if they should appear and join in this cross-petition, as well as on their own behalf, these cross-petitioners filed this cross-petition; and these cross-petitioners further state that in the year 1862, at the date of the issue of the said equipment bonds, the Toledo and Wabash Railway Company, which executed, issued, and sold the same, was a consolidated railroad corporation of Ohio and Indiana, owning within the State of Ohio a railroad beginning in the city of Toledo and running through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the State line of Indiana at the western boundary line of the township of Harrison, in the county of Paulding, and running thence in the State of Indiana westward to the boundary line of the State of Illinois; and these cross-petitioners further state that the said Toledo and Wabash Railway Company continued to operate its said railroad until the year 1865, at which time the said Toledo and Wabash Railway Company aforesaid, the Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company, the three last-named companies being corporations organized under the laws of the State of Illinois and together owning and operating a line of railroad extending westward from the western terminus at the western boundary line of the State of Ohio, in Harrison township, Paulding county, Ohio, of the railroad owned and operated by the Toledo and Wabash Railway Company aforesaid, duly entered into an agreement for the consolidation of the said companies and for the ownership of their respective lines of
112 railways by a consolidated company under the name of the Toledo, Wabash and Western Railway Company, which agreement of consolidation was duly adopted, executed, and ratified by the directors and stockholders of the said consolidating companies, and was filed in the office of the secretary of State of Ohio on the 6th day of July, 1865, and then and thereafter was carried into full effect and execution, whereby the said Toledo, Wabash & Western Railway Company became and thereafter was a consolidated corporation of the States of Ohio, Indiana, and Illinois, owning and operating a line of railroad beginning at the city of Toledo, in the State of Ohio, and extending thence westward through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the boundary line of the State of Indiana, on the west boundary of the township of Harrison, in the said county of Paulding, and thence westward through the

States of Indiana and Illinois; and these cross-petitioners further aver that the said agreement of consolidation contains a provision for the consolidation of the roads, property, and capital stock of the said consolidating companies into one company, to be named and known as the Toledo, Wabash and Western Railway Company, upon a certain basis and conditions, which were duly adopted and ratified by the directors and stockholders of the said companies so consolidating, among which were the following, viz: That the capital of the consolidated company should be ten million dollars as follows, to wit: First-mortgage bonds, three million four hundred thousand dollars ($3,400,000.00); second-mortgage bonds, two million five hundred thousand dollars ($2,500,000); convertible equipment bonds, six hundred thousand dollars ($600,000); convertible preferred stock, one million dollars ($1,000,000); common stock, two million
113 five hundred thousand dollars ($2,500,000), which convertible equipment bonds were the same equipment bonds whereof the plaintiff, the said James Compton, and these cross-petitioners are holders of part of the issue thereof as aforesaid; and it was further by said consolidation agreements especially provided that all the rights, franchises, property, debts, and choses in action of the said respective constituent companies should vest in the consolidated company and the said agreement contained the following clause: "It is further agreed that the bonds and other debts hereinbefore specified in the manner and extent specified and not otherwise provided for in this agreement shall, as to the principal and interest thereon, as the same respect*ful*ly fall due, be protected by the said consolidated company according to the true meaning and effect of the instruments or bonds by which such indebtedness of the several consolidating companies may be evinced;" and these cross-petitioners respectfully represent and state and charge the fact to be that the provision aforesaid was in fact intended to and does in law operate to bind the said consolidated company and all its property and franchises by written articles of consolidation duly executed and so as aforesaid agreed upon and ratified by the directors and stockholders of the said constituent companies constituting the consolidated company to protect the said equipment bonds whereof these cross-petitioners, the plaintiff, and the said James Compton are holders as aforesaid by a preferable and first lien, prior to all subsequent liens, incumbrances, or mortgages created by said consolidated company and all judgments against it upon and binding all the railroad, equipment, rights, franchises, property, debts, and choses in action of the constituent companies so as aforesaid vested in and transferred to the consolidated company, and being in the nature of a mortgage thereof; and these cross-petitioners further state that the said Toledo, Wabash and Western Railway Company, so by the
114 said consolidation agreement constituted from and after the date of the said consolidation, held possession of the railroad properties and equipment aforesaid of the said constituent companies, and all of the franchises, rights, property, debts, and choses in action of the said constituent companies so consolidated, and operated said line of railroad of the said constituent companies as a single rail-

way system; that thereafter on the first day of February, 1867, the said Toledo, Wabash & Western Railway Company resolved to make and issue and did make and issue its bonds to the extent of fifteen million dollars ($15,000,000), and secured the same by a mortgage on its entire line to Isaac H. Knox, of the State of Missouri, and the defendant James R. Jesup, of the State of Connecticut, as trustees, which mortgage and the bonds secured thereby are known as the consolidated mortgage and bonds of the said Toledo, Wabash & Western Railway Company, by which mortgage it was proposed by said consolidated company to provide for the security of the said equipment bonds aforesaid; but these cross-petitioners aver that the same had already been fully provided by the said prior lien contained in the said consolidation agreement, and they aver that the lien and encumbrance of the said equipment bonds attaching to them by virtue and force of the said consolidation agreement is prior in time and superior in right to the said mortgage to the said Knox and Jesup, trustees; that since the execution of said consolidated mortgage said Isaac H. Knox has departed this life, leaving surviving him as trustee said James R. Jesup; and these cross-petitioners further state that afterwards, in the year 1873, a certain mortgage of its line of railway from Toledo westward, known as the gold mortgage of the Toledo, Wabash and Western Railway Company, was executed by it to secure the payment of five million dollars ($5,000,000) of bonds, payable in gold coin, issued and dis-
115 posed of by it, and that in the year 1875 proceedings were commenced in this court and in the proper Indiana and Illinois courts to foreclose said mortgage, in which proceedings decrees were duly rendered for sale and the said mortgaged premises were sold, and the line of railway so mortgaged, being the entire line of the railway of the Toledo, Wabash & Western Railway Company, with all its equipment, rights, and franchises, was after due confirmation of said sale by this court conveyed to John W. Ellis and others as a purchasing committee of the bondholders; and these cross-petitioners further state that in the decree of foreclosure made by this court, under which the said property within the State of Ohio was so as aforesaid sold and conveyed, was contained the following provisions and conditions, subject to which the said sale was made and confirmed and the said conveyance was made, viz: "And that the said sale of said road, property, equipment, and franchises be made subject to the priority and continuance of said several mortgage liens and without prejudice to any claim which may be made by the holders of the bonds called equipment bonds referred to in the petition, as to which all questions arising are left open."

And these cross-petitioners say that said equipment bonds last hereinbefore referred to and described in said provision of the said foreclosure decree are the same equipment bonds of part of which the plaintiff, these cross-petitioners, and James Compton are holders.

And these cross-petitioners further state that the said Ellis and others, who as a purchasing committee purchased the said property, rights, and franchises at the said foreclosure sale, in due accordance with law, reorganized the said premises and duly constituted a rail-

way corporation to whom the said rights, franchises, and premises and line of railway and equipment were conveyed, subject to the claim of the holders of the said equipment bonds as aforesaid,
116 which company took the name of and was known as the Wabash Railway Company; which was done by the said purchasing committee by the organization of corporations under the laws of the States of Indiana, Ohio, and Illinois for said purpose and the consolidation of said corporations into a single consolidated corporation by the said name of the Wabash Railway Company under articles of consolidation which were duly filed in the office of the secretary of state of the State of Ohio on the 10th day of January, 1877, and that on the 12th day of January, 1877, the said conveyance was made and delivered to the said last-named company by the said purchasing committee, and thereby the Wabash Railway Company became vested with title to the said lines of railway, equipment, rights, and franchises, subject, however, to the prior lien and incumbrance aforesaid of the said equipment bondholders, and the said Wabash Railway Company took possession of the said railway and other property and operated and used the same until the 25th day of October, 1879, when it was itself duly consolidated and united with the St. Louis, Kansas City and Northern Railway Company, a corporation organized under the laws of the State of Missouri and owning a continuous line of railroad from the western terminus of the railroad of the said Wabash Railway Company to Kansas City, in the State of Missouri, with certain extensions and branch lines.

And these cross-petitioners further aver that the agreement providing for the said last-named consolidation was duly executed and went into effect and provided for the ownership of said property, rights, and franchises by the consolidated company therein named and known by the name of the Wabash, St. Louis and Pacific Railway Company.

And these cross-petitioners further state that by said consolidation the said Wabash, St. Louis and Pacific Railway Company
117 succeeded to and became the owner of all the rights, franchises, premises, property, and railroad line, including equipment, of the Wabash Railroad Company and of the Toledo, Wabash and Western Railway Company and of the Toledo and Wabash Railway Company, subject, however, to the prior incumbrance aforesaid in favor of said equipment bonds and holders thereof, including the plaintiff, the said James Compton, and these cross-petitioners.

And these cross-petitioners further state that in January, 1877, before the said foreclosure sale and the creation of the consolidated company known as the Wabash, St. Louis and Pacific Railway Company and the conveyance of said railroad line, property, and franchises to it as hereinbefore stated, the Wabash Railway Company did in January, 1877, execute and deliver a mortgage of all its property and franchises to George I. Seney, of the State of New York, trustee, and afterwards, in May, 1879, another mortgage of all its said property and franchises to Solon Humphreys, of the State of New Jersey, and Daniel A. Lindley, of the State of New York, trus-

tees; and these cross-petitioners further state that the said mortgages were, and each of them is, junior and subject to the rights of the holders of said equipment bonds and to the lien and incumbrance on said premises of the said equipment bonds and the interest thereon, of which said equipment bonds and the interest thereon the plaintiff, the said James Compton, and these cross-petitioners are the holders of part, but that the said Wabash, St. Louis and Pacific Railway Company took title under said foreclosure sale and agreement of consolidation last hereinbefore aforesaid and the conveyances aforesaid; also subject to the said mortgages to the said Seney, Humphreys, and Lindley, trustees; and these cross-petitioners further state that the said The Wabash, St. Louis & Pacific
118 Railway Company has refused payment of the said equipment bonds or of any part thereof or of any interest therein and has wholly failed and neglected to protect the same or to provide for the payment thereof or any part thereof or of any part of the interest thereof, although retaining, all and singular, the property and exercising the franchises and legal rights of the said Toledo and Wabash Railway Company, which made, issued, and sold them, said property lying within the States of Ohio and Indiana.

And these cross-petitioners further state that on or about the first day of June, 1880, the said Wabash, St. Louis and Pacific Railway Company, to secure an issue of its bonds intended to be issued and disposed of, amounting in the aggregare to fifty million dollars ($50,000,000), made and executed to the Central Trust Company of New York, — corporation of the State of New York, and James Cheney, of the State of Indiana, as trustees, a mortgage or deed of trust bearing date on said day, known as its general mortgage, and thereby conveyed to said trustees, subject to all the prior liens thereon, all and singular the line of railroad of the mortgagor company wheresoever situated, together with the equipment, appurt-ances, and franchises thereunto belonging, and thereafter sold and delivered or otherwise disposed of said bonds to various persons and corporations to the amount of seventeen million dollars ($17,000,000).

And these cross-petitioners further state that the lien of said mortgage is subsequent and junior to the lien and incumbrance of the equipment bonds aforesaid, including the said bonds owned by the plaintiff, the said James Compton, and these cross-petitioners.

And these cross-petitioners further aver that thereafter and on or about the 28th day of May, 1884, the said Wabash, St. Louis & Pacific Railway Company filed its bill in equity in the circuit court of the United States for the eastern district of Missouri
119 against the said Central Trust Company of New York, James Cheney, and others, alleging its insolvency and praying for the appointment of receivers and the sale of its railway property for the payment of its mortgage debts excepting the debt due upon the said equipment bonds which were not referred to in said bill in equity, and none of the holders of which were made parties defendant thereto, and suits of similar nature were at or about the same time instituted by the same complainant against the same defend-

ants in the circuit court of the United States for the northern district of Ohio, western division, and for the northern and southern districts of Illinois and the district of Indiana and in other courts, and afterwards suits were brought in State courts, in the said several States, by the Central Trust Company of New York and James Cheney for the foreclosure of the said general mortgage, each of which suits was duly removed from the said State courts into the circuit court of the United States for the proper district, and, with the action so removed into the circuit court of the United States for the eastern district of Missouri, was, by the order of said court, consolidated, the suit so as aforesaid instituted therein by the Wabash, St. Louis and Pacific Railroad Company, and thereafter such proceedings were had in said consolidated suit that decrees and supplemental decrees of foreclosure and sale were rendered therein and also in the said suits so as aforesaid pending in the said several circuit courts of the United States, except the circuit court of the United States for the district of Illinois, and thereafter and on or about the 26th day of April, 1886, under and in pursuance of said decrees and supplemental decrees of foreclosure, the said property and franchises in and by said general mortgage conveyed, being all the railways, franchises, and rights, including equipment,
120 of the said Wabash, St. Louis and Pacific Railway Company were sold at public vendue to James F. Joy, of the State of Michigan; Ossia D. Ashley, and Thomas H. Hubbard, of the city of New York, and Edgar T. Welles, of the State of Connecticut, who had been constituted and were a purchasing committee under a certain plan of reorganization of the Wabash, St. Louis and Pacific Railway Company, entered into on the 15th day of July, 1885, by divers and sundry bondholders of the Wabash, St. Louis and Pacific Railway Company as such committee, and on or about the 15th day of June, 1886, a decree was made and entered in the said circuit court of the United States for the eastern district of Missouri confirming said sale and directing its master in chancery to execute and deliver to said purchasers a proper deed of conveyance of the said railway and other property, rights, and franchises, subject in all things to the rights and equities of the holders of bonds secured by mortgages prior in date to the said general mortgage of June 1, 1880, on any part of said property; and thereafter application was made by said purchasing committee claiming to have performed said decree to the said circuit court of the United States for the eastern district of Missouri for a release and delivery to them of possession of said railroad and other property last aforesaid, whereupon, the 31st day of December, 1886, it was by said court duly ordered that said delivery be made as so prayed for upon compliance by said purchasing committee with certain conditions, and that, until said conditions should be complied with, said property should remain in the hands and under the operation and management of certain receivers by said court before that time appointed.

And the said purchasing committee aver and claim that they have in all respects complied with the said order and with
121 all the other orders and decrees of said court and with the

terms of said sale, and that they are therefore entitled to the possession, custody, and control of said property and franchises covered by and embraced in said general mortgage, subject, however, to all encumbrances upon any part of said property prior in date to the date of said general mortgage hereinbefore stated.

And these cross-petitioners further state that the Farmers' Loan and Trust Company is a corporation duly created under and by virtue of the laws of the State of New York, and that the said Farmers' Loan and Trust Company claims and alleges that the Toledo and Wabash Railway Company was a consolidated company formed by consolidation with other companies, whereof the Toledo and Illinois Railway Company was one, which consolidation was made and executed and carried into full effect after the 8th day of September, 1853, and that on said last-named day the said Toledo and Illinois Railway Company conveyed to the said Farmers' Loan and Trust Company, by way of mortgage, its line of railroad, being the said line of railway hereinbefore described, extending from the city of Toledo, Ohio, to the west line of Harrison township, in the county of Paulding, in the said State, to secure certain mortgage bonds of the said Toledo and Illinois Railroad Company to the amount in all of nine hundred thousand dollars at their par value, with certain interest thereon, and the said Farmers' Loan and Trust Company aver and claim that the said mortgage bonds were sold and disposed of by the said Toledo and Illinois Railway Company and are outstanding in the hands of divers *bona fide* holders thereof, and that there is due thereon a large amount of principal and interest, which averments and claims these cross-petitioners deny and dispute for the reason that these cross-petitioners are not informed and do not know or believe
122 the fact to be as alleged by said Farmers' Loan and Trust Company and do not admit, but therefore deny, that said mortgage was duly executed or duly delivered, or that it secured the said amount or any amount, or that any sum of money is due or payable upon said bonds, but make the Farmers' Loan and Trust Company party hereto, and pray that it may be compelled to set up and fully describe and disclose by answer to this cross-petition the full nature and extent of their said claim, and that evidence may be taken, and that this court shall upon final hearing ascertain the amount of said mortgage and provide for the security thereof, if there be any such mortgage, and of the bonds secured thereby, if there be any such bonds, in favor of the holders thereof, if there be any such holders, and of the said Farmers' Loan and Trust Company, and if it appears that said mortgage has been paid or its enforcement is barred by lapse of time, as these cross-petitioners are informed and believe and therefore aver to be the fact, then that this court shall in final judgment adjudge and decree that the mortgage aforesaid is not a prior and superior claim and encumbrance upon the premises aforesaid to the lien of the said equipment bonds so as aforesaid held by these cross-petitioners by the said James Compton, and by the plaintiff; and these cross-petitioners further say that the said James F. Joy, of the State of Michigan,

claims and alleges the fact to be that the said Toledo and Wabash Railway Company, on or about the 15th day of October, 1858, and prior to the issue of said equipment bonds held as aforesaid by these cross-petitioners, by the said James Compton and the plaintiff, duly issued its mortgage bonds amounting at their par value to the sum of one million dollars ($1,000,000) and secured the same by mortgage of the said premises and railway property, equipments, rights, and franchises last described to Edwin D. Morgan,
123 trustee, and said Edward D. Morgan having departed this life, that the said James F. Joy has under and in accordance with the said provisions of the said mortgage been duly appointed and qualified as his successor in said trust, and that said bonds were sold and disposed of by the said Toledo and Wabash Railway Company and are outstanding in the hands of divers *bona fide* holders thereof, and that there is due thereon a large amount of principal and interest, which averments and charges these cross-petitioners deny for the reason that they are not informed and do not know the fact to be as alleged by the said James F. Joy, and therefore do not admit, but deny, that the said mortgage was duly executed or duly delivered, or that it secures the said amount or any amount, or that any sum of money is due or payable upon said bonds, or that James F. Joy has been duly appointed successor to the said Edwin D. Morgan, whose death they admit, but they make the said James F. Joy party defendant hereto, not only in his capacity as member of the purchasing committee of the Wabash, St. Louis & Pacific Railway Company as aforesaid, but also the claimant and alleged trustee and pretended successor of said Morgan under said alleged mortgage, and pray that he may set up the *ma*ture and extent of the same, and that evidence may be taken and herein had, and that in the final judgment in this cause it may be adjudged that the said mortgage is not binding as an encumbrance upon the said property and is not a lien or encumbrance thereon prior to the lien and encumbrance of the said equipment bonds.

And these cross-petitioners further state that although the said James Compton has recovered judgement for the sale of that part of the said Toledo & Wabash railway within the State of Ohio as aforesaid and of the franchises which were of the said Toledo & Wabash Railway Company and its equipment, with all the additions and accretions thereto, nevertheless that said James Comp-
124 ton's lien thereon and the right of any purchaser thereof under the said judgment is not and will not be either superior *nor* inferior to that of these cross-petitioners or of the plaintiff, but is a lien and incumbrance of equal dignity and priority, the benefits of which must be shared in proportion to the amounts of said bonds by them respectively held; that the said lien in favor of the said James Compton and of the plaintiff in this suit and of these cross-petitioners *were* created at the same time by the same agreement of consolidation and the same series or issue of equipment bonds and are in all respects equal and none of them is superior to any other, and that these cross-petitioners and the plaintiff, desiring to prosecute their said rights and enforce their said claims in co-operation

with the said James Compton and as sharers of an equal lien created at the same time in favor of them all, including said Compton, by the said agreement of consolidation and issue of equipment bonds, appeared in this court in action of the said James Compton against the said Wabash, St. Louis and Pacific Railway Company and others, and moved this court for leave to be made defendants therein, and proved to the said court their said several rights as hereinbefore and in the petition in this cause alleged, but the said court, deeming the action of the said James Compton not to be representative in character, but only brought to assert his individual rights in the premises, overruled the said motions and at various dates refused leave to the plaintiff and afterwards to these cross-petitioners to appear in said action or to be made parties thereto or to file answers and cross-petitions or to set up their said rights therein, and the said James Compton has successfully resisted all and every attempt of the plaintiff and of these cross-petitioners and of each of them,
125 although diligently made and pursued, to be made parties in said suit and is not consenting thereto, but still resists the same.

Wherefore, and in order that complete justice may be done between all said parties, these defendants, by leave of the court here first had and obtained, file this cross-petition and make defendants hereto the following persons and corporations, to wit: The Adelbert College of Western Reserve University, a corporation created by the laws of the State of Ohio; The Toledo, Wabash and Western Railway Company, a corporation existing in the States of Ohio, Indiana, and Illinois; The Wabash Railway Company, a corporation existing in the States of Ohio, Indiana, and Illinois; The Wabash, St. Louis and Pacific Railway Company, a corporation of the States of Ohio, Indiana, Illinois, and Missouri; James R. Jesup, of the State of Connecticut, as surviving trustee; George I. Seney, of the State of New York, as trustee; Solon Humphreys, of the State of New Jersey, and Daniel A. Lindley, of the State of New York, as trustees; The Farmer's Loan and Trust Company, a corporation of the State of New York, as trustee; The Central Trust Company, of New York, a corporation of the State of New York, and James Cheney, of the State of Indiana, as trustee; Thomas M. Hubbard and Ossian D. Ashley, of the State of New York, and Edgar T. Welles, of the State of Connecticut, and James F. Foy, of the State of Michigan, as purchasing committee and trustees, the said James F. Foy in his alleged capacity as trustee, and James Compton, of the District of Columbia; that the said defendants, when served with process or otherwise duly notified by publication in accordance with law, may answer or demur to this cross-petition, and may set up and assert by such pleading all and singular their rights, claims, and interests in or incumbrances upon the said railway franchises and rights which were of the Toledo and Wabash Railway Company, and are or lately were of the Wabash, St.
126 Louis and Pacific Railway Company extending from Toledo, Ohio, through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the State line of Indiana at the western boundary

line of the township of Harrison, in the said State, and thence westward to the western boundary line of the State of Indiana, with all the accretions and additions thereto and the equipment thereof; that all liens and incumbrances thereon may be marshalled and their priority ascertained and adjudged; that it may be found and held that the lien of the said equipment bonds so as aforesaid issued in the year 1862 to the total amount of six hundred thousand dollars ($600,000) at their par value, with all the interest thereon accrued and matured, and that hereafter to mature at the rates aforesaid until and after judgment and until payment thereof, and the lien encumbrances in favor of the holders of the same by virtue of the ownership thereof, including those of the plaintiff, these cross-petitioners, and the said James Compton, are the first and prior lien and encumbrance upon all the said railway premises, franchises, and property, and are superior in right to each and every claim of each and every defendant hereto; that a receiver may be appointed to take possession thereof and operate and manage the same; if and after the said receivers now in possession thereof may have surrendered or otherwise been vested of possession that the said premises, franchises and property in Ohio and Indiana be sold at judicial sale by the sheriff of said county or a master commissioner be appointed therefor by this court, as an entirety, by a title free and clear from all encumbrances whatsoever; that this cause may be referred to a master commissioner for the marshalling of liens, and to state and report each and every lien on any part of said premises junior and subordinate to the lien and encumbrance protecting the said equipment bonds as afore-
127 said; that the said master commissioner be directed *directed* to advertise or otherwise give suitable notice to all holders of equipment bonds of the issue aforesaid other than the plaintiff, the said James Compton and these cross-petitioners and to all holders of claims protected and secured in priority of lien and encumbrance by the said agreement of consolidation, first hereinabove described, to present the same to the said master commissioner and make due proof thereof; that the said equipment bonds and all other claims protected in said priority of lien and incumbrance by said agreement of consolidation executed in the year 1865, as aforesaid, be first paid out of the proceeds of such sale, and that just distribution be made of the residue of such proceeds, if any, according to the rights of the parties as they may appear and be established before said master commissioner and this court and for all other and further relief to which in equity and good conscience these petitioners or any other party to this cause may, upon final hearing, prove to be entitled.

GEO. HOADLEY,
JOHN C. F. GARDNER, &
LEE & BROWN,
*Attorneys for William F. Redmund and Others, Defendants and Cross-Petitioners Aforesaid.*

128 State of Ohio, Lucas County, Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others, Defendants.

STATE OF *Ohio*,
*City and County of New York.*

William F. Redmond, being duly sworn, says that he is one of the cross-petitioners named in the foregoing answer & cross-petition, and that he believes the statements of the said answer and cross-petition to be true; and affiant further states that the following-named defendants to said answer and cross-petition are non-residents of the State of Ohio, and that service of summons cannot be made within said State upon any one of them, and that this case is one of those mentioned in section 5048 of the revised statutes of Ohio, and that the said defendants reside out of the State of Ohio, at places of residence hereinafter stated as follows, viz: James R. Jesup at Westport, in the State of Connecticut; Solon Humphreys at Bergen Point, in the State of New Jersey; James Cheney at Fort Wayne, in the State of Indiana; Edgar T. Welles at Hartford, in the State of Connecticut; James F. Joy at Detroit, in the State of Michigan; James Compton at Washington, in the District of Columbia; George I. Seney at Brooklyn, in the State of New York; Daniel A. Lindley, The Farmers' Loan and Trust Company, The Central Trust Company, Thomas H. Hubbard, and Ossian D. Ashley, each of New York city, in the State of York; and this affiant upon oath further states that this action is brought under the 5022d section of the revised statutes of Ohio for the sales of real property, viz., of the railway which was in the years 1862 and 1865 owned by the Toledo and Wabash Railway Company, extending from
129 Toledo, in the county of Lucas, through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the west boundary line of Harrison township, in the county of Paulding, in the State of Ohio, the same being the west boundary line of the State of Ohio and the east boundary line of the State of Indiana, and thence westward through the State of Indiana to the western boundary thereof, under the lien and encumbrance created and declared in the said years by the execution, sale, and delivery of bonds, called equipment bonds, of the said Toledo & Wabash Railway Company to the amount in all of six hundred thousand dollars ($600,000), part of which are held and owned by this affiant and his co-defendants, who file the said answer and cross-petition, viz., said bonds of said railway company of the par value of one hundred and ninety thousand dollars, each bond bearing interest at the annual rate of seven per cent., evidenced by coupons or interest warrants, payable semi-annually on the first days of May and November of each year until the maturity of the principal of said bonds, which was on the first day of May in the year 1883, of which coupons or interest warrants

there are now due or owing to said cross-petitioners and held by them, all of said coupons or interest warrants, beginning with the coupon which matured May 1st, 1875; also by articles of consolidation duly entered into in the year 1865 between the said Toledo and Wabash Railway Company, the Great Western Railway Company of 1859, the Quincy & Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company, the three last named being corporations organized under the laws of the State of Illinois, whereby said consolidated company agreed to protect said bonds, and established and created a first and preferable lien upon all its said railway, equipment, rights, and franchises, and all additions and accretions thereto for the security of the same and the
130 interest thereon; and further affiant saith not.

WILLIAM F. REDMOND.

Subscribed in my presence and sworn to before me this 2d day of January, 1889.

[SEAL.] A. J. McCORMACK,
*Notary Public, City and County of New York.*

On the 5th day of Jan'y, 1889, there was filed in said court a præcipe for a summons on said cause; which præcipe is in the words and figures following, to wit:

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY CO. *et al.* } Precipe.

Clerk will issue summons in this cause on the answer & cross-petition of William F. Redmond, John B. Manning, David Kohn, Wm. M. Kohn, & Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham & Benjamin F. Ham, partners under the firm name of Ham Bros., and the other defendants in the answer and cross-petition named (naming in the summons all of them) to the sheriff of Lucas county against the Wabash, St. Louis and Pacific Railway Company, the Toledo, Wabash and Western Railway Company, & the Wabash Railway Company, returnable according to law, endorse- "equitable relief prayed for."

GEO. HOADLEY,
JOHN C. F. GARDNER, &
LEE & BROWN,
*Att'ys for Cross-Petitioners.*

Thereupon a summons on said cause was issued by the clerk of said court to the sheriff of Lucas county; which summons is
131 in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

To the sheriff of Lucas county:

You are commanded to notify the Wabash, St. Louis and Pacific Railway Company, the Toledo, Wabash and Western Railway Company, and the Wabash Railway Company that they have been sued by William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins, and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead; George B. Mead and Walter M. Atkinson, executors, and Eliza Mead, executrix, of H. R. L. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveria, on cross-petition in the case of the Adelbert College of Western Reserve University, against The Wabash, St. Louis and Pacific Railway Company *et al.* in the court of common pleas of Lucas county, and that unless they answer by the second day of February, A. D. 1889, the cross-petition of the said above-named defendants against them filed in the clerk's office of said court such cross-petition will be taken as true and judgement rendered accordingly. You will make due return of this summons on the fourteenth day of January, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this fifth day of January, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk*,
By N. HADNETT,
*Deputy Clerk.*

Said summons was endorsed as follows, to wit: Summons in
132 action on cross-petition of William F. Redmond *et al.* Equitable relief prayed for. George Hoadley, John C. F. Gardner, Lee & Brown, attorneys for cross-petitioner.

On the 14th day of January, 1889, said summons was filed with the sheriff's return thereon written in the words and figures following, to wit:

Received this writ of the 5th day of January, 1889, and the same is hereby returned without service.

JOHN S. HARBECK, JR., *Sheriff*,
By W. H. HARBECK, *Deputy.*

On the 22nd day of January, 1889, there was filed in said court a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.

Clerk will issue summons for the defendant James Compton, returnable according to law.

LEE & BROWN,
*Att'ys for Pl'ff.*

On the 22nd day of Jan'y, 1889, there was filed in said court an affidavit for service of summons outside of State in said cause; which affidavit is in the words and figures following, to wit:

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.

*Affidavit.*

STATE OF OHIO, *Lucas County*, } *ss:*

John C. Lee, being duly sworn, says that he is one of the
133 attorneys of plaintiff in this action; that service of summons cannot be made within this State on the defendant James Compton, who is a resident of Washington city, in the District of Columbia, and that the cause is one of those mentioned in section 5048 of the Revised Statutes of Ohio.

JOHN C. LEE.

Sworn to before me and subscribed in my presence this 21st day of Jan'y, A. D. 1889.

[SEAL.] T. W. WHEELER,
*Notary Public.*

Thereupon a summons in said cause was issued by the clerk of said court to the sheriff of Lucas county; which summons is in the words and figures following, to wit:

THE STATE OF OHIO, *Lucas County*, } *ss:*

To the sheriff of Lucas county:

You are commanded to notify James Compton that he has been sued by the Adelbert College of Western Reserve University in the court of common pleas of Lucas county, and that unless he answer

by the 23rd day of February, 1889, the original, supplemental, & amended petitions of said plaintiff against him filed on the clerk's office of the said court, such original, supplemental, & amended petitions will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 4th day of February, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this 22nd day of January, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk*,
By N. HADNETT,
*Deputy Clerk.*

On the 2nd day of February, 1889, said summons was filed with the return thereon written in the words and figures following, to wit:

134 DISTRICT OF COLUMBIA, } ss:
*Washington City,* }

I, Joseph L. Atkins, being duly sworn, do depose and say that on the 28th day of January, A. D. 1889, I delivered personally to the within-named James Compton a full and true copy of the within and foregoing summons, together with the endorsements thereon.

JOSEPH L. ATKINS.

Sworn to before me and subscribed in my presence this 29th day of January, A. D. 1889. Witness my hand and official seal the day and year aforesaid.

[SEAL.] THOS. S. HOPKINS,
*Notary Public, Dis'ct Col.*

On the 2nd day of February, 1889, a certified copy of the original petition was filed, which is in the words and figures following, to wit:

*Petition.*

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis & Pacific Railway Company, James R. Jesup and Isaac H. Knox, as Trustees, and George I. Seney, Trustee; John Humphreys and Daniel A. Lindley, as Trustees, Defendants.

The plaintiff now comes and, for cause of action against the defendants herein, says that it is a corporation duly incorporated and existing under and pursuant to the laws of the State of Ohio; that on and prior to the first day of October, 1862, the Toledo and Wabash Railway Company was a corporation duly organized and existing

under and pursuant of the laws of the State of Ohio and Indiana and owning a line of railway extending from the city of Toledo, in the State of Ohio, and passing through the counties of Lucas,
135 Henry, Fulton, Defiance, and Paulding, in said State, and through the counties of Allen, Huntington, Wabash, Miami, Cass, Carroll, Tippecanoe, Fountain, and Warren, in the State of Indiana, to and terminating at a point in the west line of State Line city, in said last-named county.

That the said Toledo and Wabash Railway Company was itself a consolidated railroad company and was formed by the consolidation of the Toledo and Wabash Railroad Company, a corporation existing within and by virtue of the laws of the State of Ohio and organized to maintain and operate a railroad from Toledo to Harrison t'w'p, Paulding county, in the State of Ohio, and the Wabash & Western Railway Company, a corporation existing within and by virtue of the laws of the State of Indiana and organized to maintain and operate a line of railroad from State line in Allen county to State Line City, Warren county, in the State of Indiana.

That on or about the first day of October, A. D. 1862, the board of directors of the said Toledo & Wabash Railway Company, in pursuance of the power and authority vested in them by law, resolved that the president of said company be authorized and directed to cause to be prepared bonds of the said company to an amount not exceeding six hundred thousand dollars for the purpose of providing further equipment and satisfying other requirements of the said company, which bonds were to bear date November, 1862, and the principal thereof was to be payable to a trustee or the bearer in the city of New York on the first day of May, A. D. 1883, and to bear interest at seven per cent., payable semi-annually at the same place, which interest was to be represented by coupons; that the bonds so to be issued should be executed in the usual manner and under the corporate seal of said company and should be convertible into the common stock of said company at par at any time within five
136 years from the date thereof, but should not be entitled to a dividend for any time on which the holder thereof should have received interest, and that the executive committee of said company be authorized to issue, sell, and dispose of the said bonds in such manner and upon such terms as they should deem to be for the best interests of said company, all of which will more fully appear by reference to a copy of said resolutions hereto attached, marked Exhibit "A," and made a part of this petition; that on or about the first day of November, A. D. 1862, the said Toledo and Wabash Railway Company, by its president and secretary, duly authorized thereto, and in accordance with said resolution, under its corporate seal, executed a series of bonds, amounting altogether to the sum of six hundred thousand dollars, known as equipment bonds, severally and consecutively numbered, and being all of the same tenor and purport, except the numbers thereof and the sums thereby severally secured and payable, and that the following is a true copy of one of said bonds in said series:

No. 557. $500.

UNITED STATES OF AMERICA, *States of Ohio and Indiana.*

Toledo and Wabash Railway Company.

Issue of equipment bonds not to exceed $600,000 in amount.

The Toledo & Wabash Railway Company, a body corporate, acknowledges itself to be indebted to the bearer hereof for money borrowed in the sum of five hundred dollars to be paid on the first day of May 1883 with interest from and after the first day of May 1863, at the rate of seven per cent. per annum payable semi-annually on the first day of May and the first day of November in each year, on the surrender of the respective interest warrants hereto appended; both principal and interest payable at the company's agency in the city of New York.

This bond is one of a series authorized to be issued under resolution of the board of directors of said company passed on the
137 first day of October 1862 to an amount not exceeding $600,000 and is convertible into the common stock of said company at par, at any time within five years from the date thereof, but the stock to be issued therefor shall not be entitled to a dividend for any time for which the interest may be paid on this bond, which is convertible only at the option of the holder hereof. In witness whereof the said company has caused its corporate seal to be hereunto affixed and its president and treasurer to subscribe their names hereto, this first day of November 1862.

[SEAL.] A. WOODS *President.*
J. N. DRUMMOND *Treasurer.*

(Revenue stamp, 25 cents, cancelled.)

That annexed or attached to each of said several bonds was a series of interest warrants or coupons for each semi-annual installment of interest which would become due and payable of said bonds by the terms thereof until the principal of said bonds should become due and payable, and that all of said interest warrants or coupons were and are of the same tenor and effect, excepting the sums severally secured thereby and the time when the same would become due and payable and the numbers thereof; that said interest warrants or coupons were and are payable on the first days of May and November in each year, and that the following is a correct and true copy of one of said coupons or interest warrants:

$17$\frac{50}{100}$. Toledo and Wabash Railway Company.

Interest warrant for seventeen and fifty one-hundredths dollars payable in the city of New York May 1st 1875, for six months' interest on equipment bonds for $500.

No. 557. J. N. DRUMMOND *Treasurer.*

That each of said coupons or interest warrants was executed and signed by said Toledo & Wabash Railway Company by its treas-

urer duly authorized thereto; that after said several bonds and the said several coupons or interest warrants thereunto annexed
138 or attached had been duly executed as aforesaid by the said Toledo & Wabash Railway Company certain of said bonds, to wit, numbers five hundred and fifty-seven and five hundred and fifty-eight, of the denomination of five hundred dollars each, were, long prior to the commencement of this action by the said Toledo & Wabash Railway Company, for value received, sold and delivered to *bona fide* purchasers thereof, who thereupon became the *bona fide* owners and holders thereof for value, and that prior to the commencement of this action the said plaintiffs, for a valuable consideration and in good faith, purchased the said bonds hereinbefore particularly mentioned and of which the numbers are hereinbefore particularly mentioned, including the coupons or interest warrants thereto annexed or attached, hereinafter particularly mentioned, being all the said coupons or interest warrants attached or annexed to said bonds which fell due and became payable on and after the first day of May, 1875, from the *bons fide* holders of said bonds, and that the same were by said *bona fide* holders assigned, transferred, and delivered to it, the said plaintiff, and that the said plaintiff is now the *bona fide* holder and owner for value of said bonds and coupons or interest warrants and of all the money due and to become due thereon; that on or about the 29th day of May, A. D. 1865, by an agreement signed by its president and secretary, duly authorized therefor, and sealed with its corporate seal, the said Toledo and Wabash Railway Company agreed to consolidate its road, property, and capital stock with the road, property, and capital stock of the following-named railroad corporations, duly organized and existing under and by virtue of the laws of the State of Illinois, viz: The Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railway Company; and that the new corporation formed by such consolidation became and was known as the Toledo, Wabash and
139 Western Railway Company.

That by the terms of said agreement for such consolidation the said Toledo and Wabash Railway Company entered therein on the basis of three million four hundred thousand dollars first-mortgage bonds, twenty-five hundred thousand dollars second-mortgage bonds, six hundred thousand dollars convertible equipment bonds, being the equipment bonds hereinbefore mentioned, and thirty-five hundred thousand dollars stock, and it was specially provided in said agreement, among other things, that all the rights, franchises, property, real and personal, debts, choses in action of the respective companies, said parties to said agreements of consolidation, should vest in the said consolidated company, and that all bonds and other debts in said agreement specified, including the said equipment bonds hereinbefore mentioned, should be protected by said consolidated company; that said agreement of consolidation was duly executed by the said The Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railway Company, by the president and secretary of each

of said companies respectively duly authorized therefor, and under their corporate seals, and was ratified by the stockholders of said Toledo and Wabash Railway Company in due form of law on the 28th of June, 1865, by the stockholders of the said Great Western Railway Company of 1859 and of the Quincy and Toledo Railroad Company on the 30th day of June, 1865, and by the stockholders of the Illinois and Southern Iowa Railroad Company on the first day of June, 1865, and was on or about the sixth day of July, 1865, filed in the office of the secretary of state of the State of Ohio, and on the 3rd day of July, 1865, was filed in the office of the secretary of state of the State of Indiana, and on the 30th day of June, 1865, was filed in the office of the secretary of state of the State of
140 Illinois; and the said Toledo, Wabash & Western Railway Company thereupon became a railroad corporation organized and existing under the laws of the States of Ohio, Indiana, and Illinois, owning a line of railway consisting of the respective railroads of the companies named in said agreement of consolidation.

That all of the rights, franchises, property, real and personal, debts, choses in action of the said Toledo and Wabash Railway Company upon the consummation of said consolidation passed to and became vested in the said Toledo, Wabash and Western Railway Company upon the considerations stated, and that no other provision was made for the payment of the outstanding debts of said Toledo and Wabash Railway Company, including the said equipment bonds, other than that contained in said agreement of said consolidation; that said Toledo, Wabash and Western Railway Company paid the coupons or interest warrants attached to said equipment bonds as they matured from and after the time of said consolidation up to and including that *the* falling due of the first day of May, 1870; that on or about the first day of February, 1867, the said Toledo, Wabash and Western Railway Company resolved to make and issue its bonds to the extent of fifteen million dollars and to secure the same by mortgage on its entire property, including the property which it derived from the said Toledo and Wabash Railway Company, which said mortgage became and has been known as its consolidated mortgage and the bonds secured thereby as its consolidated bonds; that the said Toledo, Wabash and Western Railway Company on or about said last-mentioned date made and executed its certain mortgage or trust deed to the defendants Isaac H. Knox and James R. Jesup, trustees, in pursuance of said resolution to secure the payment of said consolidated bonds amounting in the aggregate to the sum of fifteen million dollars and
141 no more, with interest at the times and in the manner therein mentioned and set forth, as well as to secure the payment of a certain sinking fund as therein mentioned, which mortgage or trust deed was dated on said first day of February, 1867, and was duly sealed with the corporate or common seal of the company and was subscribed by the president and secretary of said company, duly authorized therefore, and was duly acknowledged and on or about the said date was delivered by the said Toledo, Wabash & Western Railway Company to said trustees therein named, a copy

of which said mortgage or trust deed is here attached, marked Exhibit "B," and made a part of this petition; that in and by said mortgage or trust deed the said Toledo, Wabash & Western Railway Company in consideration of one dollar transferred, assigned, sold, and set over to the said trustees, Isaac H. Knox and James R. Jesup, all its real and personal property then owned or used or that thereafter might be owned or used by the said railway company in connection with its said railroad and everything appertaining and appurtenant thereto, and all its franchises, powers, privileges, and chartered or other rights then acquired or to be thereafter acquired along its said line of railroad or branches thereof; that in said mortgage or trust deed it is recited that said Toledo, Wabash & Western Railway Company has been duly formed under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois by the consolidation of the stock, property, rights, franchises, and interests of the several companies known as the Toledo and Wabash Railway Company, the Great Western Railway Company of 1859, the Quincy and Toledo Railway Company, and the Illinois and Southern Iowa Railroad Company, and that at the time of each consolidation the property of said various companies was subject to certain bonded debts and mortgages created by said several companies or by other companies which at the time of the creation of said debts
142 and mortgagors were then owners of the property so consolidated; that in said mortgage or trust deed it is further recited that the funded debt of said Toledo, Wabash and Western Railway Company, including that secured by mortgage liens as well as that not so secured, amount in the aggregate to the sum of thirteen million three hundred thousand dollars, besides interest, and that said funded debt was represented and made up as follows, to wit: First-mortgage bonds of the Toledo and Illinois Railroad Company for the sum of nine hundred thousand dollars, secured by a first mortgage on that part of the road of said Toledo, Wabash & Western Railway Company in the State of Ohio running from Toledo to the westerly boundary of said State; bonds of the Toledo and Wabash Railway Company for the sum of one million dollars, secured by a second mortgage on the same property last mentioned; first-mortgage bonds of the Lake Erie, Wabash and St. Louis Railroad Company for the sum of twenty-five hundred thousand dollars, secured by a first mortgage on that part of the road of the said Toledo, Wabash & Western Railway Company lying in the State of Indiana; bonds of the Wabash & Western Railway Company for the sum of one million five hundred thousand dollars, secured by a second mortgage on the last aforesaid property; first-mortgage bonds of the Great Western Railway Company for the sum of one million dollars secured by a first mortgage on that part of the property of the said Toledo, Wabash and Western Railway Company in the State of Illinois extending from Decatur to the Illinois river at Naples; bonds of the last-named company for the sum of one million three hundred and fifty thousand dollars, secured by a mortgage on that part of the road of the said Toledo, Wabash and Western Railway Com-

pany in the State of Illinois extending from the State line of Indiana to the Illinois river, there being then outstanding of said
143 bonds the sum of twenty thousand dollars, the rest having been returned by a portion of the bonds next described: First-mortgage bonds of the Great Western Railroad Company of 1859 for the sum of twenty-five hundred thousand dollars, secured by a mortgage on that part of the road of the said Toledo, Wabash and Western Railway Company in the State of Illinois extending from Naples and Meredosia, as its western termini, to the boundary line between the States of Illinois and Indiana, the last-named bonds having been created to retire the aforesaid one million dollars and thirteen hundred and fifty thousand dollars of Great Western Railway Company bonds; bonds of the Great Western Railway Company of 1859 for the sum of twenty-five hundred thousand dollars, secured by a mortgage on the last aforesaid property; bonds of the Illinois and Southern Iowa Railroad Company for the sum of three hundred thousand dollars, secured by a first mortgage on that part of the road of the said Toledo, Wabash and Western Railway Company extending from Clayton to Carthage, in the State of Illinois; bonds of the Toledo and Wabash Railway Company for the sum of six hundred thousand dollars, known as equipment bonds; bonds of the Toledo, Wabash and Western Railway Company for the sum of one million dollars, known as sinking-fund bonds; that in said mortgage or trust deed it is further recited that it is deemed for the interests of the said Toledo, Wabash and Western Railway Company, as well as for the benefit of the holders of all of said various classes of bonds, that the whole of the same should be consolidated into one and the same mortgage debt upon equitable principles, and that of the bonds to be issued and made and secured by said mortgage to the amount in the aggregate of the sum of fifteen million dollars there should be retained thirteen million three hundred thousand dollars to retire in such manner and upon such terms as the directors of said company might
144 from time to time prescribe a like amount of the bonds of the various companies thereinbefore enumerated and described and representing the said funded debt, and that the balance of said bonds, to wit, one million seven hundred thousand dollars thereof, should be used to obtain additional equipment and improvements and for such additional purposes as the directors might deem advisable; that the said mortgage or trust deed was presently thereafter filed for record and was duly recorded in the manner required by law in the several offices in the counties in the State of Ohio, Indiana, and Illinois in which the property then owned by said Toledo, Wabash & Western Railway Company and which is covered by the said mortgage was then situated; that said Toledo, Wabash and Western Railway Company made and issued its several bonds in the form and for the amounts mentioned in said mortgage or trust deed and sealed the same with the corporate seal of said company and caused the names of its president and treasurer to be thereto affixed, all of which bonds were equally secured by said mortgage to said trustees; that interest warrants or coupons for the

payment of the interest becoming due on said bonds, according to the terms thereof, were annexed to each of said bonds. A copy of one of said bonds is fully set out in the copy of said mortgage hereto attached, marked "B;" that the said Toledo, Wabash & Western Railway Company did make, execute, and issue one million dollars of said consolidated bonds secured by the said consolidated mortgage or trust deed, and did therewith retire a like amount of certain of the bonds previously issued by the said company and then outstanding, and which bonds are enumerated and described in the said consolidated mortgage or trust deed as bonds of the Toledo, Wabash and Western Railway Company known as sinking-fund bonds, amounting in the aggregate to the said sum of one
145 million dollars, and that said one million dollars of said consolidated bonds so issued are now outstanding, except as the same may have been purchased for the sinking fund mentioned and described in said consolidated mortgage or trust deed, and that there are now outstanding bonds of said issue, amounting in the aggregate to the sum of two million six hundred and ten thousand dollars or thereabouts, which have come by transfer, sale, and delivery into the possession of and are now held by a large number of individuals, partnerships, and corporate bodies who are the owners thereof and are entitled to the moneys thereby agreed to be paid, but whose names are unknown to this plaintiff and are too numerous to be made parties to this action; that afterwards and on or about the 6th day of October, 1868, the said Toledo, Wabash and Western Railway Company, by an agreement signed by its president and secretary, duly authorized thereto, and sealed with its corporate seal in due form of law, agreed to consolidate its road, property, and capital stock with the road, property, and capital stock of the Decatur and East St. Louis Railroad Company, a railroad company organized and existing under and by virtue of the laws of the State of Illinois; that by the terms of said agreement for said consolidation it was provided, among other things, that all the rights, franchises, privileges, property, and appurtenances of every description, choses in action, debts, dues, and demands of the said parties thereto should vest in the said consolidated company, and that the terms of the articles of consolidation hereinbefore mentioned, whereby the said Toledo, Wabash and Western Railway Company was formed, should be and remain in full force and be binding upon the new consolidated company, so far as the same could be applicable and so far as the same was not in conflict with the specific provisions thereon, and that said consolidated company should retain the name of the Toledo, Wabash & Western Railway Company and be
146 known there-; that the provisions contained in said consolidation agreement entered into as aforesaid on the 29th day of May, 1865, to protect the bonds therein referred to, including said equipment bonds, *was* applicable so as to remain in full force and be binding upon said new consolidated company and *was* not in conflict with the specified provisions of said consolidation agreement entered into as aforesaid on the 6th day of October, 1868; that the said Decatur and East St. Louis Railroad Company, by its president and

secretary, duly authorized thereto, duly executed, and under its corporate seal, said last-mentioned agreement of consolidation on the 3rd day of June, 1869, and the same was on the 7th day of October, 1868, in due form of law ratified by the stockholders of the said Toledo, Wabash and Western Railway Company, and on the 25th day of August, 1869, was ratified in due form of law by the stockholders of the said Decatur and East St. Louis Railroad Company, and said last-mentioned articles of consolidation were on or about the 10th day of August, 1870, filed in the office of the secretary of state of the State of Ohio, and were on the 8th day of August, 1870, filed with the secretary of state of the State of Indiana, and were on the 9th day of August, 1870, filed with the secretary of state of the State of Illinois; that all of the rights, franchises, property, real and personal, debts, and choses in action of the said parties to said last-mentioned agreement of consolidation, including all the rights, franchises, property, real and personal, debts, choses in action of the Toledo and Wabash Railway Company hereinbefore mentioned, by virtue of such consolidation passed to and vested in said new company, which became the owner of the same, subject to all the liens and charges thereupon created by said Toledo, Wabash and Western Railway Company and subject to the lien and charge thereupon of the outstanding in-
147 debtedness of the said Toledo and Wabash Railway Company agreed to be paid in and by the terms of the agreement of consolidation hereinbefore set forth, to which the said Toledo and Wabash Railway Company was a party, including said equipment bonds, which said equipment bonds the said new company, under the provisions of said last-mentioned consolidation agreement, became obligated and agreed to pay; that said defendant, The Toledo, Wabash and Western Railway Company, from and after the time of said last-mentioned consolidation paid the coupons or interest warrants on said equipment bonds hereinbefore mentioned as the same matured up to and including that falling due on the 1st day of November, 1874; that on or about the first day of April, 1873, the said defendants, The Toledo, Wabash & Western Railway Company, as parties of the first part, and the said defendants, Isaac H. Knox and James R. Jesup, as trustees named in the consolidated mortgage or trust deed hereinbefore mentioned, as parties of the second part, made and executed a certain indenture and deed of further assurance, wherein the said defendant, The Toledo, Wabash and Western Railway Company, expressly covenanted and agreed with the said parties of the second part and with all persons whom it might in anywise concern that the said defendant, The Toledo, Wabash and Western Railway Company, would not make or issue or attempt to make or issue any of the then remaining twelve million three hundred thousand dollars of the reserve bonds secured by said consolidated mortgage theretofore executed to the said parties of the second part as trustees except for the purpose of or simultaneously with the retiring of an equal amount of the balance then remaining of the funded debt enumerated in said consolidated mortgage or trust deed aforesaid, so that when all of the said reserved bonds should

have been used the whole of the balance of the funded debt would be extinguished and discharged, and that it is in said indenture and deed of further assurance further covenanted by and on the part of the party of the first part thereto with said trustees
148 and with all persons whom it might in anywise concern that the covenants therein contained should be supplementary to said consolidated mortage or trust deed and constitute a part of said consolidated mortgage aforesaid, and be of the same effect to all intents and purposes as if they had been inserted therein; that the said indenture and deed of further assurance was duly executed by said defendant, The Toledo, Wabash and Western Railway Company, by its president and secretary, duly authorized thereto, and sealed with its corporate seal, and was duly signed and sealed by said trustees, and a copy thereof is hereto attached, marked Exhibit "C," and made a part of this petition. Plaintiff further says that the directors of the said Toledo, Wabash and Western Railway Company have never yet prescribed the manner and terms in which the various classes of bonds enumerated and described in said consolidated mortgages or trust deed representing the funded debt by said consolidated mortgage especially secured, including said equipment bonds, should be retired, as in said mortgage required, but have wholly neglected and refused so to do, and have never issued such consolidated bonds to retire said equipment bonds outstanding or any of them, and that said plaintiff is ready and willing and has hitherto been ready and willing, and the persons from whom it procured said equipment bonds owned by it as aforesaid have always been ready and willing to accept said consolidated bonds in the place and stead of the said equipment bonds now held and owned by the plaintiff hereinbefore enumerated, and which it claims are secured by said consolidated mortgage hereinbefore set forth; that the said defendant, The Toledo, Wabash and Western Railway Company, from the time of its organization, continued in the possession of and to own and operate the said line of railroad and property which passed to it and vested in it at the time
149 of its formation, as hereinbefore set forth, including the property and railroad originally owned by the Toledo & Wabash Railway Company hereinbefore mentioned, lying in the States of Ohio and Indiana, and all the other property described in the said consolidated mortgage or trust deed until the foreclosure proceedings hereinafter set forth were instituted; that on or about the 22nd day of February, 1875, an action was instituted and a petition filed in the court of common pleas of Lucas county, Ohio; that on or about the 24th day of February, 1875, an action was instituted and a complaint filed in the Cass county court of the State of Indiana, and that on or about the 24th day of February, 1875, an action was instituted and a complaint filed in the Vermillion county circuit court of Illinois; that all of said actions were instituted at the suit of the Metropolitan National bank, in New York, and others, complainants, against the said defendant, Toledo, Wabash & Western Railway Company, and others, defendants; that in said proceeding in all three of said States a cross-bill or cross-petition was filed by

one Valentine Ketcham, praying that the property of the said Toledo, Wabash & Western Railway Company, covered by a certain mortgage executed on or about the first day of February, 1873, by the said Toledo, Wabash and Western Railway Company upon the entire line of railroad then belonging to it and other property to the New York Guaranty and Indemity Company, trustee, to secure the payment of five million dollars, and of which mortgage the said Ketchum was then trustee, might be sold to satisfy the amounts due to the holders of the bonds secured by said last-mentioned mortgage; that in said proceedings in the State of Ohio, on or about the fourteenth day of December, 1875, a decree was entered in the said court of common pleas of Lucas county, Ohio, by which, among other things, it was ordered and decreed that the said consolidated mortgage or trust deed
150 hereinbefore set forth was duly and legally made and recorded in pursuance of the laws of the several States hereinbefore named; that it was a valid conveyance for the purpose therein mentioned, and as such was a lien upon the property therein described; that said consolidated mortgage or trust deed was the first and best lien upon the whole and consolidated line of railway belonging to said Toledo, Wabash & Western Railway Company, excepting the branch extending from Decatur to East St. Louis, one hundred and eight and five-tenth- miles in length, as to which said mortgage was not a lien, but which said consolidated mortgage was subordinate and inferior to several mortgage liens upon separate parts and subdivisions of said road, which are more particularly described in said decree, excepting the road between Carthage and the Mississippi river, to wit, from Carthage to Evanston, five and four-tenths miles, completed at the date of said decree, and from Evanston to the Mississippi river at Hamilton, a further distance of about seven miles, for which the right of way was owned by said Toledo, Wabash and Western Railway Company, and also except the road from Clayton to Camp Point, a distance of six miles, as to all of which the said consolidated mortgage was thereby found to be a first mortgage; that in and by said decree it was further ordered and adjudged that to enforce the provisions of the mortgage or trust deed of which said Ketcham was trustee as aforesaid the real property, equipments, and franchises as an entirety of said Toledo, Wabash and Western Railway Company should be sold by a special master commissioner therein named, subject, however, to the liens of all mortgages and trust deeds prior to the said mortgage of which said Ketcham was trustee and particularly described in said decree, including said consolidated mortgage; and it was also ordered and adjudged that the sale of the said road, property, equipments, and franchises under said decree was to be with-
151 out prejudice to any claim which might be made by the holders of the aforesaid equipment bonds, and that all questions as to those bonds *which* were to be left open; that subsequently and in the February term of the year A. D. 1876 of the circuit court of Cass county, Indiana, and of the circuit court of Vermillion county, Illinois, decrees were made in the actions hereinbefore men-

tioned therein pending in all particulars adopting the said decree of said court of common pleas of Lucas county, Ohio, as the decree of the said several courts respectively; that in pursuance of said decree a sale was had of all the said property, effects, rights, and franchises of the said Toledo, Wabash and Western Railway Company on the 10th day of June, A. D. 1876, to John W. Ellis and others. Subsequently thereafter and on or about the first day of January, 1877, a proper deed of conveyance was made, executed, and delivered to the said John W. Ellis and others by Jacob D. Cox, who had been appointed by said decree special master commissioner to execute the same and who had made the said sale, whereby was conveyed to said John W. Ellis and others all and singular the railroad of the said Toledo, Wabash and Western Railway Company extending from the city of Toledo, in the State of Ohio, southwesterly to and through the State of Indiana and to East St. Louis and to Hamilton, on the Mississippi river, and to Naples and Camp Point, in the State of Illinois, an aggregate length of six hundred and one miles, including the right of way, road bed, and the superstructures of all sorts thereon; all repair and other shops and manufacturies, with the fixed and movable machinery, tools, and implements thereunto belonging; all engines, cars, rolling stock, and equipments of every kind and description; all supplies of timber, lumber, fuel, iron, steel, and other supplies intended for use in running said road; all equities to any real or personal property, debts, and demands due the said company,

152 together with the franchises of said railway company and of the several original companies of which it is composed and the right and franchise to be a corporation, together with all corporate franchises of said company and of the said companies severally, including the rights and franchises of said several companies to be and act as a corporation; to have and to hold the same, with the appurtenances aforesaid, subject as aforesaid, unto the said John W. Ellis and others as joint tenants and not tenants in common, and to the survivors and survivor of the said parties and to their assigns and to the heirs of the last survivor of the said parties; that the said defendant, The Wabash Railway Company, is a consolidated railway corporation existing under and by virtue of the laws of the States of Ohio, Indiana, and Illinois, and was formed by the consolidation of the Wabash Railway Company of Ohio, the Wabash Railway Company of Indiana, and the Wabash Railway Company of Illinois, corporations organized and existing on and prior to the 6th day of January, A. D. 1877, under the laws of said States respectively; that the said Wabash Railway Company of Ohio was, on or about the 28th day of December, A. D. 1876, organized as a corporation under the law of the State of Ohio by John W. Ellis, Alexander M. White, John L. Martin, George I. Seney, and Henry A. V. Post, who were designated in the articles of association as the purchasers at the judicial sale of the railroad and property of the Toledo, Wabash and Western Railway Company hereinbefore mentioned under and by virtue of the aforesaid decrees, and in said articles of association it was recited that the same were entered into by

the parties thereto for the purposes of forming a corporation under the laws of the State of Ohio, referring particularly to an act of the legislature of the State of Ohio passed May 7th, 1869, entitled "An act supplementary to an act entitled An act to authorize receivers of insolvent railroad companies to sell unfinished road-beds and
153 franchises," passed May 14th, 1868; that the said Wabash Railway Company of Indiana and the said Wabash Railway Company of Illinois were organized under the laws of their respective States for the same purposes as those for which the said Wabash Railway Company of Ohio was organized, to wit, to take title to the property and to succeed to the franchises of the said defendant, The Toledo, Wabash & Western Railway Company, under the laws of said States respectively; that the said Wabash Railway Company of Ohio, the Wabash Railway Company of Indiana, the Wabash Railway Company of Illinois, on or about the first day of January, A. D. 1877, duly entered into articles of consolidation in due form of law executed by each of said companies by their respective presidents and secretaries, duly authorized thereto and sealed with their corporate seals, which said articles of consolidation were duly filed in the office of the secretary of state of the State of Ohio on or about the 10th day of January, 1877, and that the name of said consolidated company as designated in said articles of consolidation was "the Wabash Railway Company," and that said corporation so formed is the defendant in this action, the Wabash Railway Company; that on or about the 12th day of January, 1877, said John W. Ellis and others associated with him as purchasers of the property, rights, and franchises and railroad of the said defendant, The Toledo, Wabash & Western Railway Company, at the judicial sale hereinbefore mentioned, executed and delivered to the said defendant, The Wabash Railway Company, a deed of the aforesaid property conveyed to them by the said Jacob D. Cox, as special master commissioner, subject to the payment of all liabilities charged upon said property by the aforesaid decree and subject to the liens of said consolidated mortgage or trust deed hereinbefore mentioned and the rights of the holders of the bonds secured thereby.

154 That said defendant, The Wabash Railway Company, forthwith entered into the possession of the property, rights, equipments, and franchises conveyed to them as aforesaid and continued in possession thereof till its consolidation with the St. Louis, Kansas City and Northern Railroad Company, hereinafter set forth, as the owner and holder thereof, and in operating and running the said continuous line of railroad and in exercising the franchises conveyed and transferred to them as aforesaid; that the property so conveyed to the defendant The Wabash Railway Company included all the property, railroad, and franchises originally owned, possessed, and exercised by the Toledo and Wabash Railway Company hereinbefore mentioned and owned by said Toledo & Wabash Railway Company at the time of the issue of said equipment bonds, and this plaintiff says that said defendant, The Wabash Railway Company, took said property and the whole thereof subject to the lien, equity, and charge thereupon of which equipment bonds, including the said

equipment bonds held and owned by this plaintiff as aforesaid. This plaintiff further says that said defendant, The Wabash Railway Company, was in fact and effect the said defendant, The Toledo, Wabash & Western Railway Company, in a reorganized form, and that the capital stock of the said Wabash Railway Company, consisting of one hundred and sixty thousand shares, was subscribed for and issued to the stockholders of said defendant, The Toledo, Wabash & Western Railway Company, except eight hundred shares, the same being issued to such stockholders at the rate of ten dollars for each share of stock of one hundred dollars par value; that at the time of said sale of rights, property, and franchises of the said defendant, The Toledo, Wabash and Western Railway Company, under the decrees hereinbefore mentioned, the said property, rights, franchises, and various parts thereof were, in addition to said
155 consolidated mortgage, subject to the liens of various mortgages issued to secure the payment of bonds then outstanding made and executed by the various companies out of which the Toledo, Wabash & Western Railway Company was formed and by the Decatur and East St. Louis Railroad Company, and covering the separate properties of those companies or portions thereof owned by said companies at the times said mortgage- were made and executed.

The following is a statement of such mortgage liens: A first mortgage made by the Toledo and Illinois Company for the sum of nine hundred thousand dollars, securing first-mortgage bonds of that company due as extended August 1st, 1890, for each sum.

A second mortgage made by the said Toledo and Wabash Railroad Company for one million dollars, securing bonds of said company due November 1st, 1878, for that amount.

A first mortgage made by the Lake Erie, Wabash and St. Louis Railroad Company for twenty-five hundred thousand dollars, securing first-mortgage bonds of that company due as extended August 1st, 1890; a second mortgage made by the Wabash & Western Railway Company for the sum of fifteen hundred thousand dollars, securing bonds of that company due November 1st, 1878.

A mortgage made by the Great Western Railway Company of 1859 for the sum of twenty-five hundred thousand dollars, securing bonds of that company due August 1st, 1888, for that amount; a second mortgage made by the Great Western Railway Company of 1859, for the sum of twenty-five hundred thousand dollars, securing bonds of that company due May 1st, 1893, for that amount.

A mortgage made by the Illinois and Southern Iowa Railroad Company for the sum of three hundred thousand dollars, securing bonds of that company due August 1st, 1882, for that amount; a
156 mortgage made by the Toledo and Quincy Railroad Company for the sum of five hundred thousand dollars, securing bonds of that company for that amount; bonds of the Toledo and Wabash Railway Company due May 1st, 1883, for the sum of six hundred thousand dollars, being the above-mentioned equipment bonds; a mortgage made by the Decatur and East St. Louis Railroad Company for the sum of twenty-seven hundred thousand dollars, securing bonds of that company for that amount; bonds issued

under the aforesaid consolidated mortgage made and issued by the Toledo, Wabash & Western Railroad Company, amounting to two million six hundred and ten thousand dollars or thereabouts; that the said mortgages, with the exception of that executed by the Decatur and East St. Louis Railroad Company and said consolidated mortgage, are the same mortgages recited and described in the consolidated mortgage as hereinbefore set forth and cover respectively the various railroad properties and franchises also described in said consolidated mortgage; that on so much of the property of the said Toledo and Wabash Railway Company as was situated in the State of Ohio at the time the same came into the possession and ownership of the said Toledo, Wabash and Western Railway Company as hereinbefore set forth there were only the following mortgage liens thereon: The said mortgage executed by the Toledo and Illinois Railway Company for the sum of nine hundred thousand dollars, securing bonds of that company to that amount due as extended August 1st, 1890, and the said mortgage executed by the Toledo and Wabash Railroad Company for the sum of one million dollars, securing bonds of that company to that amount due and payable November 1st, 1878, and that the property covered by said last-mentioned two mortgages
157 was and is the railroad property of the Toledo and Wabash Railway Company situated in the State of Ohio and extending from the city of Toledo and passing through the counties of Lucas, Fulton, Paulding, and Defiance to the western boundary line of said State of Ohio, in Harrison township, in said county of Paulding; that on so much of the property of the said Toledo and Wabash Railway Company as was situated in the State of Indiana at the time the same came into the possession and ownership of the said Toledo, Wabash and Western Railway Company there were the following mortgage liens thereon: The said mortgage made and executed by the Lake Erie, Wabash and St. Louis Railroad Company, made on or about the 1st day of August, 1853, to secure an issue of bonds to the amount of two million five hundred thousand dollars, due as extended on the first day of August, 1890, and said mortgage made and executed by the Wabash and Western Railway Company or or about the 15th day of October, 1858, to secure an issue of bonds to the total amount of fifteen hundred thousand dollars; that at the time the consolidated mortgage hereinbefore mentioned was made and executed by the said Toledo, Wabash and Western Railway Company there were no other mortgage liens on the property and railroad of the said Toledo, Wabash & Western Railway Company situated in the States of Ohio and Indiana, being the property formerly owned by the said Toledo and Wabash Railway Company excepting the four mortgages last above set forth, and at the time said last-mentioned property situated in the States of Ohio and Indiana came into the possession of the said defendant, The Wabash Railway Company, there were no other mortgage liens thereon excepting the said four mortgages last set forth and such additional lien as may have been created and

imposed thereupon by the execution and delivery of the aforesaid consolidated mortgage.

That on or about the 13th day of January, A. D. 1877,
158 the said defendant, The Wabash Railway Company, executed and delivered to one George I. Seney, as trustee, a certain mortgage on its railroad and property to secure certain promissory notes payable at various times until January first, A. D. 1882, amounting in all to one million twenty-six thousand five hundred fifty-five and forty-two one-hundredths dollars; that said defendant, The Wabash Railway Company, made its certain promissory notes amounting to said sum and delivered the same to certain persons, who now hold the same and of whose names this plaintiff is ignorant, and that said mortgage was duly recorded on or about the 29th day of January, A. D. 1877.

Plaintiff further says that it is unable to state how much there is now outstanding and due and unpaid on said last-mentioned mortgage, and plaintiff charges and alleges that the holders of said notes secured by the last-mentioned mortgage purchased and took such notes subject to the lien and equity of said bonds known as equipment bonds upon all of the property owned by said Toledo, Wabash & Western Railway Company and all of the property which said Toledo, Wabash & Western Railway Company took and derived at the time of its organization from the said Toledo and Wabash Railway Company, and that the holders of said promissory notes and George I. Seney as such trustee as aforesaid were and are chargeable in equity with notice of such lien and equity of said equipment bonds; that on or about the 17th day of May, A. D. 1879, the said defendant, The Wabash Railway Company, made and executed its certain mortgage or trust deed covering its entire railroad property and franchises to the defendants John Humphreys and Daniel A. Lindley as trustees to secure the payment of an issue of bonds bearing the same date, made and executed by said company, amounting in the aggregate to the sum of two million of dollars, with interest at the times and in the manner therein mentioned and set forth; that

said mortgage or trust deed is dated on the said 17th day of
159 May, A. D. 1879, and was duly sealed with the corporate or common seal of said company and subscribed by the proper officers of said company duly authorized thereto, and was duly acknowledged and delivered to said trustees; that said mortgage was thereafter, to wit, on the 11th day of August, A. D. 1879, filed for record in the recorder's office of said Lucas county and was thereafter duly recorded in the manner required by law, in said recorder's office, on the 13th day of August, A. D. 1879, in volume 76 of Mortgages, at page 281, and also in the several offices in the counties in the States of Ohio, Indiana, and Illinois in which the property owned by the said Wabash Railway Company and which is covered by said mortgage was situated; that bonds secured by said mortgage have been issued and the amount thereof now outstanding is unknown to this plaintiff. Plaintiff alleges that said last-mentioned mortgage is inferior and subject to the lien and equity of said bonds known as equipment bonds upon all of the

property which is owned by the Toledo, Wabash & Western Railway Company and upon all of the property which said Toledo, Wabash & Western Railway Company took and derived at the time of its organization from the said Toledo and Wabash Railway Company, and that the holders of said bonds and the trustees named in said mortgage were and are chargeable in equity with notice of such lien and equity of said equipment bonds.

Plaintiff further states that in and by the terms of the said consolidated mortgage it was especially provided that in case there was default in the payment of the interest due upon the said bonds secured thereby or on the payment of the installments payable into the sinking fund therein provided or of the principal of said bonds, and in that case the trustees therein named should, upon the written request of the holder or holders of the majority of
160 the then outstanding bonds, cause the said mortgaged premises to be sold at public auction.

That the holders of the majority of the bonds secured under the said consolidated mortgage and outstanding have heretofore consented to a so-called funding scheme proposed and carried into effect by said defendant, The Wabash Railway Company, by which for certain considerations they have accepted scrip for then overdue coupons or interest warrants, so that it is impracticable that the holders of a majority of such bonds should make any such request for the sale of said mortgaged premises; that the said consolidated mortgage or trust deed provided that the property thereby conveyed should be subject to the possession, control, and management of said Toledo, Wabash & Western Railway Company, parties thereto of the first part, only so long as the said company should well and truly perform all and singular the stipulations of the said consolidated bonds and of the covenants in the said consolidated mortgage or trust deed.

The said plaintiff further alleges and says that on or about the 14th day of August, A. D. 1879, by an agreement signed by its president and secretary, duly authorized thereto, and sealed with its corporate seal, the said defendant, The Wabash Railway Company, agreed to consolidate its road, property, franchises, and capital stock with the road, property, franchises, and capital stock of the St. Louis, Kansas City and Northern Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri; that in said agreement of consolidation it is, among other things, recited that the railway of the party of the first part, the said defendant, The Wabash Railway Company, extends from the city of Toledo, in the State of Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, in the last-named State, with various branch lines in said agreement specified;
161 that the railway of the party of the second part, the said St. Louis, Kansas City and Northern Railway Company, extends from St. Louis, in the State of Missouri, in a northwesterly direction to Kansas City, in the said State, with certain extensions and branch lines in said agreement specially stated; that said lines of railway would when united form one continuous line of railway in the same

general direction from the waters of Lake Erie at Toledo, Ohio, to the cities of Council Bluffs and Kansas City, on the Missouri river, and that it is considered for the advantage of both of said companies that the lines of railway in said agreement described should be united and consolidated and be owned and worked in common.

That it was in and by such agreement provided and agreed that upon the ratification of the said agreement by the shareholders of the corporations parties thereto and the election of the directors and other officers of the new corporation provided for in said agreement all the property, rights, and franchises of whatever name or nature belonging to said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company or either of them should pass to and be vested in the said new corporation and the two first-named corporations should thereon cease and determine; that it is further provided in and by said agreement that the name of the said new corporation should be "the Wabash, St. Louis and Pacific Railway Company;" that on or about the said 14th day of August, A. D. 1879, the said St. Louis, Kansas City and Northern Railway Company duly executed said agreement of consolidation on its part by its president and secretary, duly authorized thereto, and sealed the same with its corporate seal; that said agreement of consolidation, together with a supplementary agreement entered into between the same companies on or about the 10th day of October, A. D. 1879, were on or about
162 the 14th day of October, A. D. 1879, ratified in due form of law by the stockholders of the said defendant, The Wabash Railway Company, and were ratified and confirmed by a vote of more than two-thirds of the whole number of the shares of the capital stock of the said defendant, The Wabash Railway Company, and were on or about the 14th day of October, A. D. 1879, ratified and confirmed in due form of law by the stockholders of the said St. Louis, Kansas City and Northern Railway Company.

That the said articles of consolidation were duly filed in the office of the secretary of state of the State of Ohio on the 25th day of October, A. D. 1879, and that the said corporation thereby formed, the defendant in this action, The Wabash, St. Louis & Pacific Railway Company, thereupon became a railroad corporation duly organized and existing under the laws of the various States of its creation, and all of the rights, franchises, and property, real and personal, then owned and possessed by the said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company passed to and became vested in the said new consolidated company, the said Wabash, St. Louis & Pacific Railway Company, and that said last-named company now owns and is in possession of all of the said rights, franchises, and property, and owns and operates all the various lines of railway hereinbefore mentioned and set forth, including the property and railway originally owned by the Toledo and Wabash Railway Company, hereinbefore mentioned, situated in the States of Ohio and Indiana, and by the defendant in this action, The Toledo, Wabash & Western Railway Company.

That prior to said consolidation of the said defendant, The Wabash Railway Company, and the said St. Louis, Kansas City and Northern Railway Company the said companies and the stockholders or shareholders of each of said companies were duly notified of the claim, lien, and equity of the equipment bonds hereinbefore men-
163 tioned and enumerated and owned by the plaintiff, as aforesaid, on the property of the said Toledo and Wabash Railway Company and of the said Toledo, Wabash and Western Railway Company.

Plaintiff further says that the Toledo and Wabash Railway Company hereinbefore mentioned has not since the year 1865, when it was merged in the said Toledo, Wabash and Western Railway Company, maintained or continued its corporate organization, and has not since that time exercised any of its corporate powers or franchises; that said last-mentioned company and said Toledo, Wabash and Western Railway Company own no property or assets of any kind whatsoever, and that all the property, assets, and franchises which they did own and possess have passed to and become vested in the said defendant, The Wabash, St. Louis & Pacific Railway Company, as hereinbefore set forth, which now owns and is in possession of the same, subject to the lien in equity of the holders of said equipment bonds on the property originally owned by said Toledo and Wabash Railway Company and upon the property of said Toledo, Wabash and Western Railway Company covered by said consolidated mortgage.

The plaintiff further says that the interest warrants or coupons annexed or attached to all of said bonds known as equipment bonds, hereinbefore specifically mentioned and enumerated, which by their terms were due and payable on the first day of May, 1875, have not nor has either of them been paid; that each of said coupons or interest warrants due and payable as aforesaid on the first day of May, A. D. 1875, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-four.

That each of said coupons or interest warrants attached to the said bonds of the denomination of five hundred dollars is for the
164 sum of seventeen and fifty one-hundredths dollars, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the first day of May, A. D. 1875, there were two of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the aforesaid equipment bonds numbers five hundred and fifty-seven and five hundred and fifty-eight, hereinbefore mentioned, which by their terms were due and payable on the first day of November, A. D. 1875, have not nor has either of them ever been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid on the first day of November, 1875, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-five; that each of said last-mentioned coupons or interest warrants *are* attached to the said bonds of the denomination of five hundred dollars and *are* for the sum of seven-

teen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the bonds known as equipment bonds, hereinbefore specifically mentioned and enumerated, which became due and payable on said first day of November, A. D. 1875, for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned by plaintiff and known as equipment bonds, hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, A. D. 1876, have not nor has either of them been paid; that each of said interest warrants or coupons due and payable as aforesaid on the first day of May, 1876, bears the number of the bond to which it is attached and has also a separate coupon number, to wit, the number twenty-six.

That each of said last-mentioned coupons or interest war-
165 rants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the bonds hereinbefore specifically enumerated and mentioned which became due and payable on said first day of May, A. D. 1876, for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to said bonds owned by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, A. D. 1876, have not nor has either of them been paid; that each of said last-mentioned interest warrants or coupons due and payable as aforesaid on the first day of November, A. D. 1876, bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number twenty-seven.

That each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars, and that there were two of said coupons or interest warrants attached to the said bonds hereinbefore specifically mentioned and enumerated which became due and payable on the first day of November, 1876, and are for seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of May, 1877, have not nor has either of them been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid on the first day of
May, 1877, bears the number of the bond to which it is
166 attached, and also a separate coupon number, to wit, the number twenty-eight.

That each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars each, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically enumerated which became due and

payable on said first day of May, 1877, there are two for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons owned by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, 1877, have not nor has either of them been paid; that each of said last-mentioned coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, number twenty-nine.

That each of said last aforesaid coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars each, and that there are two coupons or interest warrants attached to said bonds hereinbefore specifically mentioned and enumerated for seventeen and fifty one-hundredths dollars each which became due and payable on the first day of November, A. D. 1877; that the interest warrants or coupons annexed or attached to the said bonds owned by the plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable May 1st, 1878, have not nor has any of them been paid; that each of said last-mentioned coupons or interest warrants due as aforesaid bears the number of the bond to which it is attached and a separate coupon number, to wit, number thirty;

167 that each of the aforesaid coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars each, and there are two of the coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the first day of May, A. D. 1878, and are for seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, A. D. 1878, have not nor has any of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which they are attached, and also a separate coupon number, to wit, number thirty-one.

That said last-mentioned coupons or interest warrants are attached to bonds of the denomination of five hundred dollars and are for seventeen and fifty one-hundredths dollars each, and that of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the said first day of November, A. D. 1878, there are two for the sum of seventeen and fifty one-hundredths dollars each; that the interest warrants or coupons annexed or attached to the bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of May, A. D. 1879, have not nor has any of them been paid; that each of

the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is attached or annexed; — also a separate coupon number, to wit, the number thirty-two.

168 That each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars each, and that there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars each attached to the bonds hereinbefore specifically mentioned and enumerated which became due and payable on the said first day of May, A. D. 1879; that the interest warrants or coupons attached or annexed to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, and which by the terms thereof became due and payable on the first day of November, A. D. 1879, have not nor has any of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-three; that each of said last-mentioned coupons or interest warrants *are* attached or annexed to bonds of the denomination of five hundred dollars and *are* each for seventeen and fifty one-hundredths dollars, and that there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars attached to the said bonds hereinbefore specifically mentioned and enumerated which became due and payable on the said first day of November, 1879.

That the interest warrants or coupons annexed or attached to the bonds owned and held by plaintiff and known as equipment bonds, as is hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of May, A. D. 1880, have not nor has either of them been paid; that

169 each of the last aforesaid coupons or interest warrants bears the number of the bond to which it is attached, and also a separate coupon number, to wit, the number thirty-four.

That each of said last-mentioned coupons or interest warrants is attached to the bonds of the denomination of five hundred dollars, and it is for the sum of seventeen and fifty one-hundredths dollars each, and that there are two of said coupons or interest warrants for seventeen and fifty one-hundredths dollars each attached to the said bonds hereinbefore specifically mentioned and enumerated which became due and payable on said first day of May, A. D. 1880; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as is hereinbefore specifically mentioned and enumerated, and which by their terms became due and payable on the first day of November, A. D. 1880, —; that each of the last aforesaid coupons and interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-five.

That each of last-mentioned coupons or interest warrants is attached to bonds of the denomination of five hundred dollars and is for the sum of seventeen and fifty one-hundredths dollars each, and that two of said coupons or interest warrants attached to the bonds hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on the said first day of November, A. D. 1880; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, A. D. 1881, have not nor has either of them been paid; that each of the last afore-
170 said coupons or interest warrants due and payable at the time aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-six.

That each of said last-mentioned coupons or interest warrants is attached to a bond of the denomination of five hundred dollars and is for the sum of seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants attached to said bonds hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on said first day of May, A. D. 1881; that the interest warrants or coupons annexed or attached to the said bonds owned and held by said plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of November, A. D. 1881, have not nor has either of them been paid; that each of the last aforesaid coupons or interest warrants due and payable as aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-seven.

That each of said last-mentioned coupons or interest warrants is attached to a bond of the denomination of five hundred dollars and is for seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants so attached to said bonds as hereinbefore mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on said first day of November, A. D. 1881; that the interest warrants or coupons annexed or attached to the said bonds owned and held by plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of May, *D. A.* 1882, have not nor has either of them been paid.

That each of the last aforesaid coupons or interest warrants due and payable at the time aforesaid bears the number of the
171 bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-eight.

That each of said last-mentioned coupons or interest warrants *are* attached to bonds of the denomination of five hundred dollars and *are* for seventeen and fifty one-hundredths dollars,

and two of said coupons or interest warrants so attached to said bonds as hereinbefore specifically mentioned and enumerated, for the sum of seventeen and fifty one-hundredths dollars each, became due and payable on said first day of May, 1882; that the interest warrants or coupons annexed or attached to the said bonds owned and held by the plaintiff and known as equipment bonds, as hereinbefore specifically mentioned and enumerated, which by their terms became due and payable on the first day of November, A. D. 1882, have not nor has either of them been paid; that each of the last aforesaid coupons or interest warrants due and payable at the time aforesaid bears the number of the bond to which it is annexed or attached, and also a separate coupon number, to wit, the number thirty-nine.

That each of the last-mentioned coupons or interest warrants *are* annexed or attached to bonds of the denomination of five hundred dollars and *are* for the sum of seventeen and fifty one-hundredths dollars, and two of said coupons or interest warrants so attached to said bonds as hereinbefore specifically mentioned and enumerated, for seventeen and fifty one-hundredths dollars each, became due and payable on the said first day of November, A. D. 1882; that no part of the interest falling due on said bonds known as equipment bonds, hereinbefore particularly mentioned and enumerated, on and since the first day of May, 1875, according to the terms thereof, and of the said coupons or interest warrants thereto attached, has been paid, though payment thereof has been duly demanded, and that all of said defendants which were obliged to pay the same have
172 wholly failed to pay said interest which has fallen due on said equipment bonds since the aforesaid date and which fell due on that day and have refused to pay the same; that the aggregate amount due and payable for interest as aforesaid upon said bonds known as equipment bonds, hereinbefore particularly mentioned and enumerated, pursuant to the coupons or interest warrants hereinbefore particularly mentioned, and now owned and held by plaintiff, was, on the first day of May, 1875, thirty-five dollars, and was, on the first day of November, 1875, thirty-five dollars, and was, on the first day of May, 1876, thirty-five dollars, and on the first day of November, 1876, thirty-five dollars, and on the first day of May, 1877, thirty-five dollars, and on the first day of November, A. D. 1877, thirty-five dollars, and on the first day of May, 1878, thirty-five dollars, and on the first day of November, 1878, thirty-five dollars, and on the first day of May, 1879, thirty-five dollars, and on the first day of November, 1879, thirty-five dollars, and on the first day of May, 1880, thirty-five dollars, and on the first day of November, A. D. 1880, thirty-five dollars, and on the first day of May, 1881, thirty-five dollars, and on the first day of November, 1881, thirty-five dollars, and on the first day of May, 1882, thirty-five dollars, and on the first day of November, A. D. 1882, thirty-five dollars, and there will become due as interest on the first day of May, A. D. 1883, the further sum of thirty-five dollars, and the principal of the said bonds, to wit, one thousand dollars, will be due and payable on said first day of May, A. D. 1883.

That said plaintiff further says that upon the transfer of the property and franchises of the said Toledo and Wabash Railway Company to the said Toledo, Wabash and Western Railway Company, as hereinbefore set forth, part of the consideration for such transfer was the agreement on the part of the said Toledo, Wabash
173 and Western Railway Company to pay the said bonds known as equipment bonds, and that such transfer and agreement constituted said bonds known as equipment bonds and all the moneys to become due thereon a lien on the said property and franchises of the said Toledo and Wabash Railway Company transferred by the last-named company to the said Toledo, Wabash and Western Railway Company in favor of the holders of such bonds; that thereafter and on the first day of February, A. D. 1867, said Toledo, Wabash and Western Railway Company, recognizing the lien of said bonds known as equipment bonds, executed, as hereinbefore set forth, the consolidated mortgage for the purpose of consolidating said equipment bonds and the other bonds recited in said consolidated mortgage into one and the same mortgage debt, and thereby secure to the holders of said equipment bonds, not only a lien in equity on the road and property of said Toledo and Wabash Railway Company, so transferred to said consolidated company, for such unpaid purchase price thereof, but also the right in equity to have said bonds further secured by said consolidated mortgage upon all the property and franchises of said consolidated company on an equality with all other bonds issued under said mortgage.

Whereupon plaintiff prays that this court will ascertain and determine the amount due on the said bonds known as equipment bonds and held and owned by the plaintiff herein, and will adjudge and determine the said bonds known as equipment bonds and all the moneys due and to become due thereon to be a charge and lien upon all of the property of said defendant, The Wabash, St. Louis and Pacific Railway Company, that is situated in the States of Ohio and Indiana, so far as the same was owned by the Toledo and Wabash Railway Company at the time the property and franchises of the company last named were transferred to the Toledo, Wabash and Western Railway Company, and will further adjudge that the
174 lien of said bonds on the property last mentioned has priority over all the liens of all kinds now existing upon the same, excepting the said mortgage executed by the Toledo & Illinois Railroad Company for the sum of nine hundred thousand dollars, and the said mortgage executed by the Toledo and Wabash Railway Company for the sum of one million dollars, which two mortgages are liens on that part of the said property situated in the State of Ohio, and also excepting the said mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company for the sum of twenty-five hundred thousand dollars, and the said mortgage executed by the Wabash and Western Railroad Company for the sum of fifteen hundred thousand dollars, which two last mortgages are liens on that part of said property situated in the State of Indiana.

Plaintiff further prays that the defendant The Wabash, St. Louis

and Pacific Railway Company may be decreed to pay the amount due to the plaintiff upon the said bonds herein, known as equipment bonds, which it holds and owns by a short day to be named by this court, together with all proper costs and expenses, and in default thereof that the railroad and all property and the appurtenances thereto originally owned by the Toledo and Wabash Railway Company, situated in the States of Ohio and Indiana, and which is now in the possession of the said Wabash, St. Louis and Pacific Railway Company, may be ordered and decreed to be sold for the payment of said indebtedness to this plaintiff and the said bonds owned by it, subject, however, to the said mortgage liens thereupon, which are prior to the lien of said plaintiff as the owner of said bonds known as equipment bonds, and that the money realized from such sale, after deducting all just allowances for the disbursements and expenses of such sale, be distributed in accordance with the equities of the parties entitled thereto, and that the said defendants above named or either of them may be forever
175 barred and foreclosed of and from all equity of redemption and claim of, in, and to the said premises so decreed to be sold.

The said plaintiff further prays that this court will order, adjudge, and decree that the said bonds known as equipment bonds, held and owned by the plaintiff, shall be considered secured by the said consolidated mortgage; that an account be taken of all the debts secured by said consolidated mortgage and the amounts thereof and their relative priorities, and that the said Wabash, St. Louis and Pacific Railway Company may be decreed to pay to the plaintiff and others whose debts or bonds are secured by said consolidated mortgage all arrears of interest now due or that may hereafter become due and payable, together with all costs and expenses in this behalf incurred, and in default thereof that all and singular the property covered by and described in said consolidated mortgage, with the appurtenances, rights, and franchises in the said consolidated mortgage mentioned and described, may be sold under a decree of this court, and that the proceeds thereof, after deducting all the costs and expenses of such sale, may be applied and distributed in accordance with the equities of the parties entitled to the same as ascertained by this court, and that the said defendants above named and all persons claiming under them may be forever barred and foreclosed of any and from all equity of redemption in and to the said mortgaged premises.

The plaintiff further prays that an injunction may be issued according to the form of the statute in such case made and provided, directing, commanding, and enjoining the said defendants and each of them from transferring, selling, incumbering, or in any way disposing of any of the property or franchises situated in the States of Ohio and Indiana which was transferred by the said Toledo and Wabash Railway Company to the said Toledo, Wabash and Western Railway Company at the time of the consolidation of the
176 former company in the year 1865 with the other railroad companies hereinbefore specified or any of the property

mentioned in and covered by said consolidated mortgage and for other and proper relief.

LEE, BROWN & LEE,
*Att'ys for Plaintiff.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

Henry E. Lee, being first duly sworn according to law, says that he believes the facts contained in the foregoing petition are true, and that he makes this affidavit because he is one of the attorneys for plaintiff in this action, and all of plaintiff's officers are now absent from Lucas county, Ohio.

HENRY E. LEE.

Sworn to before me and subscribed in my presence this 26th day of April, 1883.

[SEAL.]

W. S. HARRIS,
*Notary Public, Lucas County, Ohio.*

EXHIBIT A.

Resolved, That for the purpose of providing further equipment and satisfying other requirements of the company, the president be authorized and directed to have prepared bonds of this company of denominations of one hundred, five hundred, and one thousand dollars each, or of such other denominations as may be deemed advisable, to an amount not exceeding six hundred thousand dollars; said bonds to bear date November 1st, 1862, and the principal made payable to a trustee or bearer in the city of New York, on the first day of May, 1883, and bear interest at seven per cent., payable semi-annually at the same place, said interest to be represented by coupons, and the bonds so to be issued shall be executed in the usual manner and under the corporate seal, and they shall be convertible into the common stock of the company at par at any time within five years from the date thereof, but shall not be entitled to a dividend for any time on which the holder thereof has received interest.

177 Resolved, That the executive committee be authorized to issue, sell, and dispose of the said bonds in such manner and upon such terms as they may deem for the best interests of the company.

EXHIBIT B.

*Consolidated Mortgage.*

This indenture, made the first day of February, in the year of our Lord one thousand eight hundred and sixty-seven, between the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois, and having continuous lines of railroad in said States, of the first part, and Isaac Knox and James

R. Jesup, of the city, county, and State of New York, of the second part:

Whereas the said company has been duly formed under the laws and consolidation statutes of the said several States of Ohio, Indiana, and Illinois by the consolidation of the stock, property, rights, franchises, and interests of the several companies, known as the Toledo, Wabash & Western Railway Company, the Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company;

And whereas at the time of such consolidation the property of said various companies was subject to certain bonded debts and mortgages created by said several companies or by other railroad corporations which, at the time of creation of said debts and mortgages, were the then owners of the property so consolidated;

And whereas all the funded debt of said company, parties of the first part, including that secured by said mortgages, as well as that not secured by any mortgage, now amounts in the aggregate to the sum of thirteen million three hundred thousand dollars, besides interest;

And whereas said funded debt as it now exists is represented and made up as follows, to wit: First-mortgage bonds of the Toledo
178 and Illinois Railroad Company, due as extended August 1st, 1890, for the sum of nine hundred thousand dollars, secured by a first mortgage on the part of the road of the parties of the first part running from Toledo to the westerly boundary of the State of Ohio, about seventy-five miles; bonds of the Toledo and Wabash Railway Company, due November 1st, 1878, for one million of dollars, secured by a second mortgage on that portion of the road of the parties of the first part last above named; first-mortgage bonds of the Lake Erie, Wabash and St. Louis Railroad Company, due as extended August 1st, 1890, for the sum of two million five hundred thousand dollars, secured by a first mortgage on the part of the road of the parties of the first part running entirely through the State of Indiana, about one hundred and sixty-eight miles; bonds of the Wabash and Western Railway Company, due November 1st, 1878, for one million five hundred thousand dollars, secured by a second mortgage on that portion of the road of the parties of the first part last named; first-mortgage bonds of the Great Western Railroad Company, due April 1st, 1868, for the sum of one million of dollars, secured by a first mortgage on the part of the said road of the parties of the first part running in the State of Illinois, from Decatur to the Illinois river at Naples, about one hundred miles; also bonds of the last-named company, due August 1st, 1865, for the sum of one million three hundred and fifty thousand dollars, secured by a mortgage on the part of said road of the parties of the first part running in the State of Illinois from the State line of Indiana on the west to the Illinois river, about one hundred and seventy-nine miles; there being at present outstanding of said bonds the sum of about twenty thousand dollars, the rest having been retired by a portion of the bonds next described; first-mortgage bonds of the Great Western

Railroad Company of 1859, due August 1st, 1888, for the sum of two million five hundred thousand dollars, secured by a mort-
179 gage on that part of the road of the parties of the first part extending in the State of Illinois from Naples and Meredosia as its western termini to the boundary line between the States of Illinois and Indiana, about one hundred and seventy-nine miles; the last-named bonds having been created to retire the aforesaid $1,000,000 and $1,350,000 of the Great Western Railroad Company bonds.

Bonds of the Great Western Railway Company of 1859, due May 1st, 1893, for two million five hundred thousand dollars, secured by mortgage on that part of the road of the parties of the first part last named, about one hundred and seventy-nine miles; bonds of the Illinois and Southern Iowa Railroad Company, due August 1st, 1882, for three hundred thousand dollars, secured by a first mortgage on that part of the road of the parties of the first part extending from said Clayton to Carthage, in said State of Illinois, about thirty miles; bonds of the Toledo and Wabash Railway Company, due May 1st, 1883, for the sum of six hundred thousand dollars, and known as "equipment bonds."

Bonds of the Toledo, Wabash and Western Railway Company, due April 1st, 1871, for the sum of one million dollars, known as "sinking-fund bonds," the last two classes of bonds not being secured by any mortgage on any of the property of the parties of the first part.

And whereas it has been deemed for the interest of the said parties of the first part, as well as for the benefit of the holders of all said various classes of bonds, that the whole of the same should be consolidated into one and the same mortgage debt upon equitable principles; and whereas the increasing freight business of the road of the parties of the first part requires additional equipment to do the same; and whereas it has been deemed expedient for the preservation of the bridges on the line of said road that the same should be covered, and that additional depot accommodations
180 should be obtained, and that the road through its entire length should be fenced; and whereas the expenses to be incurred for the above should be provided for by the creation of new capital; and whereas, for the purposes aforesaid and for the objects herein stated, the said company, parties of the first part, has resolved to make and issue its bonds to the extent of fifteen million of dollars and to secure the payment of the same by a mortgage upon its entire property, and that of the amount of said bonds so to be made and issued *and* there should be retained thirteen million three hundred thousand dollars to retire, in such manner and upon such terms as the directors of said company may from time to time prescribe, a like amount of the bonds of the various companies hereinbefore enumerated and described and representing the aforesaid funded debt, and that the balance of said bonds, to wit,-one million seven hundred thousand dollars thereof, should be used to provide the said additional equipment and other improvements hereinbefore mentioned and for such additional purposes as the said directors

may deem advisable, and that all of said bonds should be for the sum of one thousand dollars each except two hundred, which should be for the sum of five thousand dollars each, and that all should bear date on the first day of February, A. D. 1867, and become due and payable in forty years from their date, with interest at the rate of seven per cent. per annum, payable quarterly on the first days of May, August, November, and February in each year, in the city of New York, and to be all convertible into the common stock of said company at par, at the option of the holder, at any time within ten years from their date; and whereas the said company has further resolved that a sinking fund of fifty thousand dollars per annum should be created payable to commissioners at the times and in the manner hereinafter stated and agreed and to be used by said commissioners for the purposes and in the manner as hereinafter
181 directed by these presents; and whereas it is in the intention of these presents and it is hereby so declared that all of the said bonds to be issued shall stand equally secured by these presents without reference to the times of the actual issue of said bonds, and that said bonds shall be substantially in the form following, viz:

UNITED STATES OF AMERICA, *States of Ohio, Indiana, and Illinois.*

Toledo, Wabash & Western Railway Company

*Consolidated Mortgage Sinking Fund Convertible Bond.*

Know all men by these presents, that the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidated statutes of the several States of Ohio, Indiana and Illinois, acknowledge themselves indebted to Isaac H. Knox and James R. Jesup of the city of New York or bearer, in the sum of — dollars, lawful money of the United States of America, which sum the said company promises to pay to the said Isaac H. Knox and James R. Jesup, or the bearer hereof, on the first day of February, which will be in the year one thousand nine hundred and seven, at their office or agency in the city of New York, with the interest thereon at the rate of seven per centum per annum payable quarterly yearly at their said office or agency in the city of New York, on the first day of May, August, November, and February in each year on the presentation and surrender of the coupon or interest warrants hereto annexed as they severally become due; and in case of the non-payment of any quarter-yearly installment of interest which shall have become payable and shall have been demanded, if such default shall continue for the space of six months after the maturity and demand of the said installment, the principal of this bond shall become due
182 in the manner and with the effect as provided in the deed of trust hereinafter mentioned, it is agreed between the said company and holder of this bond, that in case of any default in the payment thereof, the said company hereby waives the benefit of any extension, stay or appraisement laws now existing, or that may hereafter exist. And the said company further agree that on the sur-

render of this bond, together with all outstanding coupons or interest thereon, and at any time within ten years from the date hereof the proprietor of this bond shall be entitled to the common stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw *pro rata* dividends from the maturity of the last interest due on said bonds, at or immediately prior to the time of such conversion. And the said company further agree that they will pay the commissioners named in said deed of trust, at the times and in the manner therein stated, the sum of fifty thousand dollars per year, for the purpose of being applied and used by such commissioners as a sinking fund for the payment and extinguishment of the principal and of all the bonds issued under and secured by said deed of trust; and that this bond shall be entitled to all the benefits of said sinking fund as therein provided. This bond shall pass by delivery or by transfer on the books of the company in the city of New York after a registration of ownership certified hereon by the transfer agent of the company: no transfer except on the books of the company shall be valid unless the transfer be to bearer, which shall restore transferability by delivery: but this bond shall continue subject to the successive registrations and transfers to the bearer as aforesaid at the option of each holder; this bond is one of a series
183 of fourteen thousand two hundred bonds, 14,000 of which number- consecutively from one to fourteen thousand, inclusive, are each for the sum of one thousand dollars: two hundred of which, number- consecutively from fourteen thousand and one to fourteen thousand two hundred, inclusive, are each for the sum of five thousand dollars: and the whole series amounting in the aggregate to fifteen millions of dollars and no more and are all of like tenor, and all dated February 1st, 1867, and are made and issued to retire all the various classes of bonds and securities now composing the funded debt of said company, and to provide means of additional equipment, and for the special improvement of the property of said company, and the payment of all said bonds is secured by an indenture of mortgage or deed of trust, dated February 1st 1867, made by said company to Isaac H. Knox and James R. Jesup of the city, county and State of New York, trustees conveying the railroad equipment, franchises and property of said company, as therein described and stated, subject only to such prior liens on any part of said property as therein stated. This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed thereon and duly signed by said trustees.

In witness whereof, the said company have caused their corporate seal to be affixed hereto, and the same to be attested by the signatures of their president and secretary, this first day of February, one thousand eight hundred and sixty-seven.

[SEAL.] —— ——, *President.*
—— ——, *Secretary.*

*Indorsement on Bond.*

Payment on this bond being one of a series of $15,000,000, is secured by a mortgage deed of trust, dated February 1st, 1867, made by the Toledo, Wabash and Western Railway Company, to Isaac H. Knox and James R. Jesup, trustees, which is recorded in the
184 States of Ohio, Indiana and Illinois.

——— ———,
——— ———,
*Trustees.*

Now, therefore, this indenture witnesseth: That the said parties of the first part, the better to secure the payment of the said bonds, amounting in the aggregate to the sum of $15,000,000 and no more, with interest at the times and in the manner therein mentioned and set forth, as well as to secure the payment of the sinking fund as therein agreed, and for and in the consideration of the sum of one dollar by the parties of the second part in hand paid, the receipt whereof is hereby acknowledged, granted, bargained, sold, transferred, and set over, and by these presents do grant, bargain, sell, and set over, unto the said parties of the second part, their successors in the trust and assigns forever, all the right of way and railroad of the said parties of the first part extending from Toledo, in the State of Ohio, to and through the State of Indiana, and thence in the State of Illinois — Meredosia, with branch of said road to Naples, and from said Meredosia to Camp Point, in said State of Illinois, and also with branch of said road from Clayton, in said State, to the east bank of the Mississippi river at Hamilton, in said State, as now made or as hereinafter may be made, and as now used or as hereinafter may be used, together with all embankments, bridges, turnouts, side tracks, structures, water tanks, and fixtures, shops, engine or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all other things, real and personal, now owned or used or that hereafter may be owned or used by the parties of the first part in connection with the said railroad, and everything appertaining and appurtenant thereto, and all the franchises, powers, privileges, and chartered or other rights of the said Toledo, Wabash & Western Railway Com-
185 pany, together with all the property, real and personal, of said parties of the first part now acquired or to be hereafter acquired at Quincy, in said State of Illinois, as also a certain contract made between the said company and the Chicago, Burlington and Quincy Railroad Company, dated October 26th, 1866, with all the rights and privileges secured by said contract to said parties of the first part and all other contracts; to have and to hold all and singular the above granted and described premises, with the appurtenances thereto belonging, unto the said parties of the second part, their successors in the trust and assigns forever, in trust, nevertheless, for the person or persons and bodies politic or corporate who now or shall become holders of the said bonds or any of them, subject to the terms and stipulations of said bonds and the laws of the said several States of Ohio, Indiana, and Illinois, and also subject to

the possession, control, and management of the said company, parti-s of the first part, so long as the said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants contained in this indenture; and the said parties of the first part hereby covenant with the said parties of the second part and for the benefit of all those persons who shall become holders of said bonds or any of them and their assigns that the said parties of the first part will pay all of said bonds, principal and interest, in the manner as stated in said bonds, and that they will also pay to the persons herein appointed as commissioners the sum of fifty thousand dollars per year for the purpose of being used and applied by said commissioners as a sinking fund for the payment and extinguishment of the principal of all of said bonds so to be issued and secured by this mortgage or deed of trust, and that said sum shall be paid to said commissioners in installments of twenty-five thousand dollars every six months on the
186 first day- of Februaryand August in every year until and including the maturity of said bonds, and that the first payment of said installment shall be made on the first day of February, A. D. 1868, it being hereby understood and agreed that the said commissioners having the custody of said sinking fund shall be the president of said company, parties of the first part, and two members of the board of directors, one of which two members shall be changed every year; and it is hereby understood and declared that it shall be the duty of the said commissioners above named and their successors in the trust in respect to all the monies that shall be paid them on account of said sinking fund, as hereinabove provided, as well as to all the accumulations thereof, to invest the same by purchasing the bonds secured by these presents on the best terms the same can be bought, but not at a rate exceeding the par value of said bonds and five per cent. additional, and that the bonds so purchased shall be held by said commissioners or deposited by them with some trust company or other safe depository and be immediately registered, stamped, or endorsed as belonging to the said sinking fund, but shall remain in force, and the interest thereon shall continue to be paid by the said parties of the first part, and the amount of such interest shall be added and applied as a part of the capital of the sinking fund hereby established and be used in the same manner as the semi-annual payments of twenty-five thousand dollars herein provided for, and that preparatory to such purchase of bonds said commissioners shall give twenty days' notice thereof in one or more daily papers published in the city of New York, and shall make the purchase at the lowest price or prices at which the bonds may be offered pursuant to such notice or at such lower price or prices as they may be able to obtain the same, but not exceeding the par value of said bonds and five per cent.
187 additional, and in case the bonds cannot be purchased at the above limit within one month after said advertisement, then the said commissioners shall invest the said money in any of the bonds in the various corporations creating the funded debt of this company hereinbefore described, said last-named bonds to be pur-

chased at the lowest market price, not exceeding the par of said bonds, and in case of inability to purchase said bonds at that limit the said commissioners shall invest said moneys in the bonds of the United States. The said commissioners, through the agency of the company and such other assistants as they may find it necessary to employ, shall have regular books of account and registers kept of all their proceedings, which, with all the papers and documents held by them, shall at all times be open to the inspection of the directors of the company. The receipt of said money by said commissioners shall impose upon them the same duty to perform this trust as if they had formerly signed an agreement to execute the same in accordance with the above directions; and the said company, parties of the first part, for themselves, their successors and assigns, do hereby further covenant and agree to and with the said trustees, their successors and assigns, that in case default shall be made in any of the quarter-yearly installments of interest on any of the aforesaid bonds at the times and in the manner in the coupons or interest warrants therewith provided and shall have been demanded, and such default shall continue for the period of six months after the maturity and demand for payment of the said installments, or in case any default shall be made in the payment to the commissioners of the whole or any part of any semi-annual installment of the sinking fund as herein provided and such default shall continue for the period of six months, then and in either of such cases the principal of all the bonds secured by these presents shall become immediately due at
188 the option of the holder or holders of a majority in interest of said bonds then outstanding, to be expressed by them in writing to said trustees, and in either of such cases of default in the non-payment of interest or non-payment of the sinking fund as well as in the case of non-payment of the principal of said bonds when due, and such default in either of the three cases shall continue for said period of six months, upon the request of the holder or holders of a majority in interest of said bonds outstanding said trustees shall take actual possession of all and singular the property and effects mortgaged, and the agent or agents of said railway company actually in possession thereof are hereby ordered to give such possession to said trustees, parties of the second part, and the said trustees shall cause the said mortgaged premises or so much thereof as shall be necessary to pay and discharge the entire principal and interest of all of said bonds as may be then outstanding and unpaid, together with all expenses of sale, to be sold at public auction in the city of New York or in the city of Toledo, in the State of Ohio, or in the city of Lafayette, in the State of Indiana, or in the city of Springfield, in the State of Illinois, as they may be directed by the holder or holders of a majority in interest of said bonds, giving at least sixty days' notice of the time, place, and terms of sale, and of the specific property to be sold by publishing the same in at least three newspapers of good circulation in said city of New York, and in one newspaper published in said cities of Toledo, Ohio, Lafayette, Indiana, and Springfield, Illinois, or adjourn the said sale

from time to time in the discretion of the trustees, and if so adjourned to make the same without further notice, at the time and place to which the same may be adjourned, and to execute to the purchasers or purchaser thereof on such sale a good and sufficient deed or deeds of conveyance in fee simple for the same, which
189 shall be a bar against the parties of the first and second parts, their and each of their successors and assigns, and all persons claiming under them or either of them of all right, title, interest, claim, or demand in and to the said mortgaged premises or any part thereof, and out of the proceeds of such sale and the income next mentioned, after deducting just allowances and expenses, to pay, first, the interest in arrears on the said bonds secured by these presents and then outstanding, and then to pay the principal in full or ratably, so far as such proceeds and income shall suffice, and on and after such request to take possession and until such sale said trustees and their successors in the trust shall operate said road by such agents, receivers, and superintendents as they may appoint, and said trustees shall receive and collect all the incomes, revenues, and profits of the said railroad and mortgaged premises, and after defraying the necessary expenses of operating the same and all needed repairs thereto and the necessary taxes imposed thereon shall apply the net income so received to the payment of the interest and principal of said bonds in the order above expressed, and for the charges and expenses of so conducting the road and its needful repairs and taxes and the management of said business the said trustees shall be indemnified out of the proceeds of the sale of said road, if needful, as well as out of its receipts and income, and in case any surplus shall remain in the hands of the said trustees or their successors the same shall be paid to the said parties of the first —, their successors or assigns, it being hereby expressly understood and agreed that in no case shall any claim or advantage be taken by the parties hereto of the first part of any valuation, appraisement, stay, or extension laws now existing or that may hereafter exist, nor any injunctions or stay of proceedings or any process to be applied for or obtained or used
190 by or for them to prevent such entry or sale as aforesaid. It is understood and further agreed that at any sale of the aforesaid property or any part thereof, whether made by the power therein granted or by judicial authority, the trustees, at the request of the holder or holders of a majority in interest of the bonds then outstanding secured by this instrument, shall be bid for and purchased or cause to be bid for and purchased the property so sold or any part thereof on behalf of all the owners of the bonds secured by this instrument and then outstanding in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of such property be sold, or, if all of it be sold, at a price not exceeding the whole amount of such bonds then outstanding, with the interest thereon, and necessary expenses of such sale; and it is understood and hereby declared that this mortgage is intended and shall be a first lien on the portions of railroad and property of the parties of the first part extending in the State of Illinois from Clayton to Camp Point, the distance of about six miles, more or less, and from Carthage to

the east bank of the Mississippi river at Hamilton, as now built and as thereafter may be built, but is subject, as to the rest of said railroad and property, to prior liens thereon by mortgage, amounting in the aggregate to the principal sum of three million seven hundred thousand dollars, the same being security for that amount of the funded debt of said company as aforesaid described and which is intended to be retired by the issue of a part of the bonds secured by these presents, and whenever all of said eleven million seven hundred thousand dollars of bonds shall have been retired these presents are intended to be and become a first lien on all the railroad and property of the parties of the first part.

It is further understood and agreed by and between the parties hereto that in case of death or resignation of either of the
191 trustees, or in the event of the incapacity of either of said trustees to act in the matter of the trust, the parties of the first part, by their board of directors and the surviving or remaining trustee, as the case may be, shall elect a new trustee to supply the vacancy thereby created, who shall by such election have all the powers of the trustee whose place he may take, and in the case of the death, resignation, or incapacity to act of both of said trustees or their successors, the holder or the holders of a majority in interest of the then outstanding bonds secured by these presents shall with the said company elect or appoint new trustees, who on such election or appointment shall be invested with all the powers herein granted to the parties of the second part, and upon the death, resignation, or removal of the trustees herein appointed or of either of them or their or either of their successors all the estate, right, title, and interest in any trustee so dying, resigning, or being removed shall wholly cease and determine and the trustee so resigning or being removed shall, upon the written request of the new trustee so appointed, execute and deliver a deed or deeds of conveyance, to vest in such new trustee upon the trusts herein expressed, all the property, rights, and franchises which may be at the time held upon said trusts; and the parties of the first part do hereby covenant and agree with the said parties of the second part, their successors and assigns, for the benefit of those to whom said bonds shall be delivered and their assigns, to make, execute, and deliver to the said parties of the second part, their successors and assigns, and on their reasonable request, all such further assurances, conveyances, and instruments in the law as counsel may reasonably devise and advise the more effectually to vest in the said parties of the second part, their successors and assigns, all and
192 singular the premises hereby conveyed or intended to be for the purposes hereinbefore for that purpose mentioned or intended, and that the said trustees shall be liable, responsible, and accountable only for the exercise of reasonable diligence in the management of the trust and not one for the acts or negligence of the other- and not for the acts of the agent or agents by them at any time appointed under these presents.

This conveyance is upon the express condition and limitation that upon the payment and satisfaction of the principal and interest

of each and every of said bonds and of the expenses and reasonable charges attending the execution of this trust the estate hereby granted shall immediately be revested, in law and fact, in said company, parties of the first part hereto, its successors and assigns, without any entry or other act.

In witness whereof the said The Toledo, Wabash and Western Railway Company, the parties hereto of the first part, the day and the year first above written, caused their corporate seal to be hereto affixed and the same to be attested by their secretary and the name of their president to be signed to these presents. The parties of the second part hereto have also respectively signed and sealed the same the day and the year first above written.

A. BOODY, *President.*

[SEAL.] Attest: I. N. DRUMMOND, *Secretary.*

ISAAC H. KNOX. [SEAL.]

JAMES R. JESUP. [SEAL.]

Sealed and delivered in the presence of—
CHARLES NETTLETON.
C. H. PIERCE.

STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

Be it remembered that on this twenty-third day of March, A. D. one thousand eight hundred and sixty-seven, before me, Charles Nettleton, a notary public of the State of New York, duly commissioned
193 and sworn and dwelling in said city and county of New York, personally appeared A. Boody, the president of the Toledo, Wabash & Western Railway Company, to me known to be the real person, as such president, who, being by me duly sworn, did depose and say that he resided in the city, county, and State of New York; that he was the president of the said Toledo, Wabash and Western Railway Company; that he knows the corporate seal of the said company; that the seal affixed to the foregoing indenture or instrument was such corporate seal; that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of said company, and the said A. Boody acknowledged to me that he had executed the said indenture or instrument and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Toledo, Wabash and Western Railway Company for the uses and purposes therein expressed; and on this same day before me also personally appeared Isaac H. Knox and James R. Jesup, who are personally known to me to be the real persons whose names are subscribed to the foregoing indenture or instrument as trustees therein named, and severally acknowledged the signing and sealing of the foregoing indenture or instrument to be their voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 23rd day of March, A. D. 1867.

[SEAL.] CHARLES NETTLETON,
*Notary Public in and for the City of New York.*

EXHIBIT "C."

This indenture, made the first day of April, in the year one thousand eight hundred seventy-three, between the Toledo, Wabash and Western Railway Company, a corporation created and existing under the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois, of the first part, and Isaac H. Knox and James R. Jesup, of the city, county, and State of New York, of the second part. Whereas a certain indenture of a mortgage bearing the date of the 1st of February, in the year one thousand eight hundred and sixty-seven, and made by and between the parties hereto, the said party of the first part did mortgage all of its railroad extending from Toledo, in the State of Ohio, through the State of Indiana to Meredosia, in the State of Illinois, together with other premises in said mortgage described, to the parties hereto of the second part as trustees, in order to secure the payment of certain consolidated mortgage sinking-fund convertible bonds of the said party of the first part to the amount all together of fifteen millions of dollars, as by reference to the said indenture of mortgage will more fully and at large appear; and whereas of the said bonds to be made and issued under and secured by the said indenture of mortgage, thirteen million three hundred thousand dollars in amount were reserved for the purpose of being used to retire a like amount of certain other bonds enumerated and described in the said indenture of mortgage, which were outstanding at the time said mortgage was given, and then constituted the funded debt of the said party of the first part.

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And whereas of the said funded debt one million dollars in amount has since matured and been retired, and for that purpose an equal amount of the said reserved bonds have been used, leaving now unused and reserved for the purpose of being used to retire the remainder of the said funded debt the amount of twelve milllion three hundred thousand of the said fifteen million dollars of bonds originally secured by the said indenture of mortgage.

And whereas it is the desire of the parties hereto by more express and specific stipulations than are contained in the said indenture of mortgage to give assurance to all persons whom it may in anywise concern that the said reserve bonds shall not nor shall any or either of them be used for any other purpose than the retiring of the said funded debt or some part thereof:

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Now, therefore, this indenture witnesseth that the party of the first part, for and in consideration of the premises and of the sum of one dollar, lawful money of the United States, to it duly paid at or before the ensealing and delivery of these presents by the parties of the second part, and for divers other good causes and considerations, hath covenanted and agreed and by these presents doth covenant and agree with the parties of the second —, and with all persons whom it may in anywise concern, that the said party of the first

part will not make or issue or attempt to make or issue any of the remaining twelve million three hundred thousand dollars of reserved bonds secured by the said indenture of mortgage, except for the purpose of and subsequent to or simultaneously with the retiring of an equal amount of the balance remaining of the said funded debt, so that when all of the said reserved bonds shall have been issued the whole of the balance of the said funded debt will have been also extinguished and discharged, and whenever the said party of the first part shall call upon or request the said parties of the second part or their successors to sign the trustees' certificate endorsed upon any of the said reserved bonds the said party of the first — shall produce and exhibit to them at the same time, cancelled or for cancellation, an equal amount at least of the bonds constituting the balance of said funded debt, and that, without such production of the said last-mentioned bonds and the cancellation of the same, the parties of the second part shall
196 not nor shall either of them nor the successor of either of them sign the trustees' certificate upon either of said reserved bonds.

And the parties of the second part do hereby each for himself covenant and agree they will not sign the trustees' certificate upon either of the said reserved bonds except as hereinbefore provided; and the party of the first part doth further covenant and agree with the parties of the second part and their successors and with all persons whom it may in anywise concern that the covenant herein contained shall be supplementary to and constitute a part of the said indenture of mortgage and be of the same effect to all intent and purposes as if they were inserted therein.

In witness the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president and secretary, and the said parties of the second part have hereunto set their hands and seals the day and year first above written.

[SEAL.] TOLEDO, WABASH & WESTERN RAILWAY COMPANY,
By A. BOODY, *Pres't.*
JAMES R. JESUP.
ISAAC H. KNOX.

Attest: WM. CORNEAU, *Secretary.*

Sealed and delivered in the presence of—
ALEX. M. WHITE,
As to the signature of A. Boody, president.
CHARLES NETTLETON,
Of James R. Jesup and Isaac H. Knox.

Lucas Common Pleas Court.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup, Isaac H. Knox, George I. Seney, John Humphreys, and Daniel A. Lindley, Trustees.
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Action for injunction and relief.

Clerk will issue summons for defendants to the sheriff of Lucas county, Ohio, returnable according to law.

LEE, BROWN & LEE,
*Att'ys for Plaintiff.*

THE STATE OF OHIO, *Lucas County,* } ss:

I, J. P. Bronson, clerk of the court of common pleas of Lucas county, Ohio, do hereby certify that the foregoing is a true copy of the original petition filed herein on the 28th day of April, 1883.

Witness my hand and the seal of said court of common pleas hereto attached this 22d day of January, A. D. 1889.

J. P. BRONSON,
[SEAL.] *Clerk of Common Pleas Court of Lucas County.*

Endorsed on the above petition were the following affidavits:

DISTRICT OF COLUMBIA, *Washington City,* } ss:

I, Joseph L. Atkins, being duly sworn, do depose and say that on the 28th day of January, A. D. 1889, I delivered personally to James Compton, of Washington city, D. C., a true and full copy of the foregoing petition; and further say not.

JOSEPH L. ATKINS.

Sworn to before me and subscribed in my presence this 28th day of January, A. D. 1889.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] THOS. S. HOPKINS,
*Notary Public, Dist. Col.*

On the 2nd day of February, 1889, there was filed in said court a certified copy of the supplemental and amended petition in said cause, which is in the words and figures following, to wit:

*Supplemental & Amended Petition.*

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILROAD COMPANY, THE Wabash Railway Company, The Wabash, St. Louis & Pacific Railway Co., James R. Jesup & Isaac H. Knox, as Trustees, and George I. Seney, Trustee; John Humphreys and David A. Lindley, as Trustees, Defendants.

By the leave of the court had and obtained the plain-
198 tiff now *now* comes and, in addition to and in correction of the matters and things contained in its original petition and by way of amendment thereof, says that prior to the commencement of this action one James Compton, as plaintiff, began his certain civil action in this court against the same defendants above stated as defendants herein, save and except that in said action the said defendant, Humphreys, was correctly designated as Solon Humphreys, and said cause was pending in this court at the time of the commencement of this action; that the general purpose of said action was the recovery by plaintiff of a final judgment and decree establishing plaintiff's right to enforce as a lien about $150,000 par value of the series of bonds known as equipment bonds against the Toledo, Wabash and Western railway property within the States of Ohio and Indiana, said series of bonds being the same in kind and of the same series as the bonds set forth and described by plaintiff in its action herein; that afterwards final hearing was had in this court in said cause, and from the final judgment and decree therein rendered by this court an appeal was taken from this court in said cause to the district court of Lucas county, Ohio, and such proceeding- were had in said cause in said district court as that the same was duly reserved for decision in the supreme court of the State of Ohio, and the same was therein thereafter duly docketed pursuant to such reservation; that in said supreme court said cause continued to be pending until the final judgment and decree was therein rendered by said court on
or about the — day of ——, A. D. 1888, and the said cause in
199 and by said final judgement and decree was remanded by said supreme court to this court for execution on the footing of such final judgment and decree and for other purposes; that in pursuance of said remanding order said cause has since been duly remanded to this court, and the same now is pending herein for execution of said final judgment and decree and for other purposes.

That in and by said final judgment and decree it was, amongst other things, in substance found and adjudicated by said supreme court that the said series of $600,000 of equipment bonds so called became and was prior to the commencement of said action a valid

lien against the property of said line of railway within the States of Ohio and Indiana and subject, however, to two certain mortgage liens of $1,000,000 and of $900,000 respectively, which are named and set forth in said Compton's petition, and also in the petition of the plaintiff herein, and ordered that so much of said line of railway property as lies within the State of Ohio should be appraised, advertised, and sold by the sheriff of Lucas county at a rate not less than two-thirds the amount of the appraised value thereof; that said final judgment and decree was by a proper remanding order duly certified and transmitted to this court from said supreme court, which said final judgment and decrees so remanded are now of record in this court as provided by law; that under and pursuant to the provision of the same the said James Compton did, on or about the — day of ——, A. D. 1888, cause an order of sale to issue upon said final judgment and decree out of this court to the sheriff of Lucas county, Ohio, and thereupon said last-mentioned officer did call an inquest of three appraisers to make appraisement of the cash value of said railway property within the State of Ohio subject to the said two mortgage liens aforesaid, which said inquest was duly made, and the appraisal thereby reached was duly reported to said sheriff by said appraisers and by him filed in the office of the clerk of this court, wherein the same yet remains; that thereupon and without further proceedings under said order of sale said sheriff returned the same into this court by the order of the said James Compton and no further or supplemental order of sale has been issued therein; that the amount of said appraisal is subject as aforesaid in the sum of —, and that the amount of said equipment bonds held by said Compton, principal and interest, was found by said supreme court to be in the sum of about $339,000, the same to bear interest until paid from the — day of ——, A. D. 18—; that plaintiff is informed and believes it to be true that said James Compton in his said suit and under and by virtue of said final judgment and decree therein so remanded to and of record in this court is about further to proceed in the execution of said final judgment and decree with the sale of said railroad property and to appropriate the proceeds thereof to the payment of the costs of his said action and of his said final judgment and decree in full; that by reason of the averments contained in the original petition of plaintiff herein it is entitled to have the decree of this court declaring the amount of its said bonds a lien upon said railroad property concurrent and coequal with the lien of said Compton thereon, and that plaintiff has a right in equity to share with said Compton ratably in the proceeds from the sale of said railway property.

Plaintiff further says that it withdraws its averments, admission, and concession contained in its original petition that the said mortgage upon said railway property in the aggregate sum of $900,000 is a valid mortgage and prior to the lien of plaintiff upon said railway property, and, on the other hand, it avers that by reason of its misinformation and incorrect understanding at the time

of the filing of its original petition herein it falsely and
201 incorrectly supposed and believed said mortgage to be valid and enforceable against said railroad property and to be prior to the lien of plaintiff and other equipment bondholders, but it now avers that it is informed and believes and charges the fact to be that said mortgage is invalid, that it is barred by lapse of time, and is no longer a lien on said railway property or on any part thereof or in any sum whatsoever.

Whereupon plaintiff prays for relief as in its original petition, save and except that it here prays that its lien upon said railway property in the States of Ohio and Indiana may be declared prior to all liens thereon, save and except said mortgage lien of $1,000,000, and especially that said mortgage for $900,000 be declared no longer a lien thereon.

And plaintiff also further prays that the said James Compton may be made a party defendant hereto; that in case said railway property shall be sold under and pursuant to said final judgment and decree in favor of said Compton rendered by said supreme court of Ohio that the proceeds of such sale be held and retained in and by this court, subject to distribution to this plaintiff on its said lien held by said bonds owned by it concurrently and coequally with said James Compton, and if it shall become necessary so to do that an order be made consolidating this cause with said cause of James Compton against said Toledo, Wabash & Western Railroad Company and others, and if it shall become necessary plaintiff prays that the court will make full inquiry and finding as to any and all liens upon said railway property held by persons or parties not now formal parties in either this cause or in said cause brought by said Compton, and make full adjudication in respect thereto touching both said railway property and the proceeds to arise from the sale of the same, to the end that said railway property when it
202 shall be sold shall pass free and clear of all encumbrances to the purchaser thereof, with the view of making the same bring the largest possible price at such sale, and for other and full relief.

LEE & BROWN,
*Att'ys for Pl'ff.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

John C. Lee, being duly sworn, says that he believes the facts alleged in the foregoing amended petition are true, and that he makes this affidavit because the plaintiff is a corporation having its principal office at Cleveland, Ohio, and affiant is one of the attorneys of plaintiff in this action.

JOHN C. LEE.

Sworn to before me and subscribed in my presence this 24th day of December, 1881.

[SEAL.]

W. H. A. READ,
*Notary Public, Lucas County, Ohio.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

I, J. P. Bronson, clerk of the court of common pleas of Lucas county, Ohio, do hereby certify that the foregoing is a true, full copy of the supplementary and amended petition filed in said cause of the 2d day of December, A. D. 1888.

Witness my hand and seal of said court hereto affixed this — day of January, A. D. 1889.

[SEAL.] J. P. BRONSON,
*Clerk of Common Pleas Court of Lucas County.*

Endorsed on the above supplementary and amended petition were the following affidavits:

DISTRICT OF COLUMBIA, }
*Washington City,* } *ss:*

I, Joseph L. Atkins, being duly sworn, do depose and say that on the 28th day of January, A. D. 1889, I delivered personally to James Compton, of Washington city, D. C., a true and full copy of the foregoing petition; and further say not.

203 JOSEPH L. ATKINS.

Sworn to before me and subscribed in my presence this 29th day of January, A. D. 1889.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] THOS. S. HOPKINS,
*Notary Public, Dis'ct Col.*

On the 23rd of February, 1889, there was filed in said court a motion in said cause, which motion is in the words and figures following, to wit:

Court of Common Pleas, Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.*, Defendants.

Now comes James Compton and, *and* appearing at this time solely for the purpose of this motion, moves the court to set aside the service made upon him in this case for the following reasons:

First. Because this action is not one in which the service herein sought to be made is authorized by law. Second. Because no sufficient affidavit, as required by law, was filed herein to justify service out of the county of Lucas. Third. Because said service itself was irregular and insufficient under the laws of Ohio. Fourth. Because no sufficient or correct copies of the pleadings were served upon him and no correct or sufficient copy of the summons was served

upon him. Fifth. And for reasons other than those enumerated appearing in the record and papers on file herein, whereby it appears that said service was unauthorized, illegal, and contrary to law.

DOYLE, SCOTT & LEWIS,
*Atty's for James Compton.*

204 On the 26th day of February, 1889, there was filed in said court an affidavit and notice of publication in said cause, which affidavit is in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County,* } *ss:*

I, Chas. W. Selner, being duly sworn, say that I am manager of the Weekly Herald & Times, a weekly newspaper printed in Toledo, and of a general circulation in the county aforesaid, and that the annexed advertisement was published in said paper, beginning on the ninth day of January, A. D. 1889, and on each successive Wednesday for six weeks consecutively, commencing with that date.

CHAS. W. SELNER.

Sworn to and subscribed before me this 18th day of February, A. D. 1889.

[SEAL.] BERNARD T. BECKER,
*Notary Public, Lucas County, O.*

Said notice above referred to is in the words and figures following, to wit:

*Legal Notice.*

STATE OF OHIO, }
*Lucas County,* }

Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants. } No. 22624.

James R. Jesup, of Westport, in the State of Connecticut; Solon Humphreys, of Bergen Point, in the State of New Jersey; James Cheney, of Fort Wayne, in the State of Indiana; Edgar T. Welles, of Hartford, in the State of Connecticut; James F. Joy, of Detroit, in the State of Michigan; James Compton, of Washington, in the District of Columbia; George I. Seney, of Brooklyn, in the State of New York; Daniel A. Lindley, the Farmers' Loan and Trust
205 Company, the Central Trust Company of New York, Thomas H. Hubbard, and Ossian D. Ashley, each of New York city, in the State of New York, are hereby notified that on the fifth day

of January, 1889, in the action aforesaid heretofore brought by the Adelbert College of the Western Reserve University against The Wabash, St. Louis and Pacific Railway Company and others, now pending in the court of common pleas of Lucas county, in the State of Ohio, No. 22624, there was filed by leave of the said court and is now pending a cross-petition against them and others by William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham, Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne; James Moir, Gustavus Rollins, and Edward A. Rollins, partners, under the firm name of Rollins and Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vasser Brothers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveria, who sue not only in their own behalf, but that of all other holders of equipment bonds of the Toledo and Wabash Railway Company who may join in the prosecution of said cross-petition and contribute to the expenses thereof, the object and prayer of which cross-petition is for judgment marshalling the priorities of all liens and encumberances upon the premises and railway property, equipment, rights, and franchises now or lately owned and operated by the Wabash, St. Louis and Pacific Railway Company, and to which said defendant- respectively claim title or assert liens by way of mortgage or incumbrance thereon, and which railway premises
206 and property, equipment, rights, and franchises in the year 1862 and until the year 1865 and in and after the year 1865 belonged to and constituted the railway, premises, property, equipment, rights, and franchises of the Toledo and Wabash Railway Company, a consolidated corporation of Ohio and Indiana, extending from Toledo westward through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the west line of Harrison township, in the county of Paulding, in the State of Ohio, the same being the boundary line of the States of Ohio and Indiana, and thence eastward through the State of Indiana to the west boundary line thereof; and that it may be adjudged that, by the execution, issue, and sale of bonds called equipment bond- of said Toledo and Wabash Railway Company to the amount of their par value of six hundred thousand dollars, bearing date November 1st, 1862, and payable May 1, 1863, with interest from date at the rate of seven per cent. per annum, payable semi-annually, evidenced by coupons of interest warrants therefor, payable on the first days of November and May during each year, until maturity of said bonds, of which equipment bonds said cross-petitioners are holders and owners in various amounts shown in said cross-petition, to the total principal sum at part of one hundred and ninety thousand dollars, with interest at the rate aforesaid and evidenced by coupons as aforesaid, beginning

with the coupon which matured May 1, 1875, and until the maturity of said bonds; also by the consolidation of the said Toledo and Wabash Railway Company in the year 1865 with the Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company and the Illinois and Southern Iowa Railroad Company, the last-named three companies being corporations organized under the laws of the State of Illinois, there was created and established a lien and incumbrance on all said railway premises, property, equipment, rights, and franchises of said consolidated rail-
207 way company for the protection and security of the said equipment bonds, which is prior and preferable to any title to or other lien of incumbrance on any of the said premises and property which were of the said Toledo and Wabash Railway Company and prior, preferable, and superior to any title to or lien or incumbrance if any other party to this cause except the lien and incumbrance of the plaintiff to the extent of two of said bonds and of said James Compton to the -xtent of one hundred and fifty of said bonds with the interest thereon and the lien and incumbrance of other holders of said equipment bonds, which liens in favor of the plaintiff and said Compton and other holders aforesaid said cross-petition prays may be declared to be secured by the same lien with the said bonds held by said cross-petitioners and entitled to share *pro rata* in the distribution of the proceeds of any sale of said property; and the said cross-petition further prays that a receiver may be appointed to operate and manage said railway property and equipment during the pendency of this suit; that the cause may be referred to a master to ascertain who are the holders and the amounts of their holdings of said equipment bonds other than those held and owned by the plaintiff, the said James Compton, and said cross-petitioners; that in default of payment and redemption of said equipment bonds and the interest thereon at a date to be fixed that the said railway premises, property, equipment, rights, and franchises may be sold as upon execution at law, free and clear from all claims and demands of all parties to said cause, and especially of said defendants to said cross-petition, and that after paying the costs of said cause, said proceeds be distributed and disbursed, so far as they may apply, in payment of the principal of said equipment bonds and interest thereon at the rate of seven per cent. per
208 annum and of the said coupons, with interest thereon from their respective due dates at the rate of six per cent. per annum, so far as the same are held by the plaintiff, the said James Compton, these cross-petitioners, and others who may prove themselves entitled thereto and for general relief; and the said defendants are notified to appear and answer or demur to the said cross-petition on or before the 16th day of March, 1889, in default of which said cross-petition will be taken as confessed and judgment entered accordingly.

Toledo, January 9, 1889.

GEORGE HOADLY,
JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

On the 1st day of March, 1889, being the 47th day of the January term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. } 22624.

Now come William F. Redmund, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper and Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins, and Edward A. Rollins, partners under the firm name of Rollins and Company; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Welker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine
209 L. Cadmus, Preston Wing, and Mary L. Oliveira, who have heretofore by leave of this court filed their answer and cross-petition in this cause, and it appearing that they have made James R. Jesup, residing at Westport, in the State of Connecticut; Solons Humphreys, at Bergen Point, in the State of New Jersey; James Cheney, at Fort Wayne, in the State of Indiana; Edgar T. Welles, at Hartford, in the State of Connecticut; James F. Joy, at Detroit, in the State of Michigan; James Compton, at Washington, in the District of Columbia; George I. Seney, at Brooklyn, in the State of New York; Daniel A. Lindley, The Farmers' Loan and Trust Company, The Central Trust Company of New York, Thomas H. Hubbard, and Ossian D. Ashley, each at New York city, in the State of New York, defendants to said answer and cross-petition, and that said defendants, except The Farmers' Loan and Trust Company and The Central Trust Company of New York, are and each of them is a non-resident of the State of Ohio, and that the said Farmers' Loan and Trust Company and the Central Trust Company of New York are and each of them is a foreign corporation, organized and existing under the laws of the State of New York, and that the subject of this action and of the said answer and cross-petition is real and personal property in the counties of Lucas, Fulton, Henry, Defiance, and Paulding, in the State of Ohio, and that the relief demanded by said answer and cross-petition consists, excluding the said defendants and each one of them from any interest in said real and personal property, and that the said answer and cross-petition and the original petition in this cause do and each of them does constitute an action brought under section 5022 of the Revised Statutes of

Ohio, namely, for the sale of real property situated in said counties under a lien, encumbrance, and charge thereon, and that William F. Redmond, one of said cross-petitioners, on the 5th day of
210 January, 1889, filed his affidavit in this cause; that service of summons could not be made on any of said defendants within the State of Ohio, and that the said case is made by the filing of said answer and cross-petition is one of these mentioned in section 5048 of the Revised Statutes of Ohio.

And it further appearing to the court by the affidavit of Charles W. Selner that notice by publication, containing a summary statement of the object and prayer of said cross-petition naming the court wherein it is filed and notifying the said defendants therein described as residing aforesaid that they are and each of them is required to appear and demur or answer to said cross-petition on or before the 16th day of March, 1889, has been made for six consecutive weeks in the Weekly Herald and Times, a newspaper published in Lucas county, in the State of Ohio; and it further appearing to the court that immediately after the first publication of said notice said cross-petitioners delivered to the clerk of this court copies of the said publication, with the proper postage, and the said clerk mailed a copy of said publication to each of said defendants, directed to his residence named therein as aforesaid, it is now ordered that said service by publication be approved and confirmed, and that the said defendants be and each of them is required to answer or demur to said cross-petition within the said time named in said publication.

On the 11th day of March, 1889, there was filed in said court a demurrer in said cause; which demurrer is in the words and figures following, to wit:

*Demurrer of Humphreys and Lindley, Trustees, to Cross-Petition.*

In the Court Common Pleas *Court* of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
211 THE TOLEDO, WABASH AND WESTERN RAILROAD COMPANY and Others, Defendants.

And now come Solon Humphreys and Danile A. Lindley, made parties herein in their capacity as trustees, and demur to the cross-petition herein filed by William F. Redmond, John B. Manning, and others, and show for cause that said cross-petition does not set forth facts sufficient to constitute a cause of action against these defendants.

OSBORN & SMITH,
*Att'ys for Defendants.*

HENRY CRAWFORD, ESQ., *of Counsel.*

On the 16th day of March, 1889, defendants, by their attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

*Answer of Purchasing Committee.*

In the Court of Common Pleas.

STATE OF OHIO, } ss:
*Lucas County.* }

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.

And now come the defendants, Ossian D. Ashley, James F. Joy, Edgar T. Welles, and Thomas H. Hubbard, made parties hereto by the cross-petitions of William F. Redmond and others, and by way of answer thereto say that these defendants are constituted and acting as purchasing committee on behalf — a very large majority of the holders of Mortgage bonds outstanding upon the lines of railway formerly owned by the Wabash, St. Louis and Pacific Railway Company, including therein bonds secured by all the mortgages, which are a lien upon the lines of railway formerly owned by the Toledo and Wabash Railway Company and named in the articles of consolidation, set forth in said cross-petition.

They say that they admit the averments of said cross-peti-
212 tion as to the execution by the Wabash, St. Louis and Pacific Railway Company of the general mortgage on or about the first day of June, 1880, to the Central Trust Company and James Cheney and the issue and sale of bonds thereunder to the amount of $17,000,000; also the averments of said cross-petition as to the appointment of receivers of the lines of railway and property of the Wabash, St. Louis and Pacific Railway Company on or about the 28th day of May, 1884, and the subsequent action taken in said United States circuit courts in the cause in which said receivers were appointed, and the foreclosure and sale of property of the said Wabash, St. Louis and Pacific Railway Company and the purchase of the same at said foreclosure sales by these defendants, acting as a purchasing committee as aforesaid, and that they claim to be entitled to the possession and control of the same, but they say further that, notwithstanding such claim on their part, the said United States courts of the southern districts of Illinois, district of Indiana, and northern district of Ohio, western division, have at times since the said purchase by them retained exclusive possession and control of all the said lines of railway east of the Mississippi river and the property appurtenant thereto through the receivers appointed by said courts in the said cause named in said cross-petition and in the following causes ancillary thereto and connected therewith still pending in said court:

First. A suit brought by one Thomas Atkins and others in each of said courts as bondholders under the consolidated mortgages of

1867 and 1879, and to which suit the trustees of all the prior mortgages upon said railways were made parties and in which all of said trustees appeared and filed answers or cross-bills.

Second. In a suit brought by James R. Jesup and Isaac H. Knox, as trustees of the consolidated mortgage of 1867, and to which
213 all the trustees of all the other mortgages upon said railways or divisions thereof are parties, as well as these defendants as a purchasing committee, as the holders of the equity of redemption by purchase of the same at said foreclosure sale. In said last-named suit the trustees of all the mortgages upon all the divisions of said Wabash, St. Louis and Pacific railway have appeared and filed cross-bills asking for the foreclosure of their respective mortgages, and, among others, the Farmers' Loan and Trust Company and James F. Joy, as trustees of the mortgages prior in lien to the alleged lien of the plaintiffs and as cross-petitioners in this case, have thus appeared and answered and fi*e*ld their cross-bills asking foreclosure of their respective mortgages.

These defendants further say that by orders of said United States courts, duly made and entered in the said suit brought by Jesup and Knox, the said receivership has been duly extended to both of said suits, and said receivers are now holding all the lines of railway and property of the Wabash, St. Louis and Pacific Railway Company, subject to the jurisdiction and orders of said court under suits brought to foreclose mortgages prior in lien to the alleged lien sought to be enforced in this action. These defendants further say that in the said suit brought by James R. Jesup and Isaac H. Knox the said United States courts are proceeding to foreclose all the mortgage liens upon said lines of railway and to determine the amount and priority of said liens and to adjust all rights and equities of all parties in and to said property; and these defendants aver that they intend to sell and dispose of all said lines of railway and to apply the proceeds in satisfaction of said liens in the order in which they are entitled to receive the proceeds of said sales.

214 These defendants say that in the said suit brought by James R. Jesup and Isaac H. Knox they have duly appeared and filed answers, and that said court has therefore duly acquired prior jurisdiction and control over said property and of these defendants, and has the exclusive right to determine the rights of the said cross-petitioners in and to the same, and that the said cross-petitioners should seek relief in said proceedings and in said courts.

These defendants further say that they have no knowledge or information sufficient to form a belief as to the allegation in said cross-petition that the said parties therein named are the owners and holders of the said bonds or that the said bonds were sold for value by the said Toledo and Wabash Railway Company, and they therefore deny the same; they also deny the allegation as to the amount of said equipment bonds, and deny that said $600,000 of bonds were put upon the market and sold for value. They admit that an agreement of consolidation of the lines of railway named in

said cross-petition was made, but they deny the construction put upon the same by the said cross-petitioners, and ask leave to produce the said agreement upon the trial of this case.

For a second and further defense these defendants say that under and in pursuance of orders of the said United States courts duly made and entered in the said causes pending therein named in said cross-petition, wherein The Central Trust Company of New York and James Cheney were the plaintiffs, and prior to the said foreclosure sale, there were duly issued by said receivers certificates of indebtedness for debts incurred in the operation and maintenance of said railways, all of which were prior in lien upon said railways and properties to all other liens of any and every character whatsoever, and which amounted in the aggregate to over two million of
215 dollars; and these defendants say that after the said foreclosure sale and acting under the orders and decree of said courts they paid the said sums of money represented by said certificates and other evidences of indebtedness, and thereby became the owners and holders of said certificates and evidences of indebtedness and equitably entitled to assert the lien of the same as against said properties prior to any other mortgage or lien whatsoever.

For a third and further defense, these defendants say that they here repeat all the allegations made in the first and second defenses herein the same as if each were here specifically set forth as a part hereof; and these defendants say that all the said cross-petitioners and the plaintiff herein, with full knowledge of the foregoing facts and of the said foreclosure proceedings, allowed these defendants to go forward and purchase said properties and advance large sums of money thereon without making any claim to any part thereof and without asserting any lien thereon or to any part of the same. These defendants further say that the said $17,000,000 of bonds were put upon the market and sold, and the several persons purchasing the said bonds, at the time when they acquired said bonds, did so without notice of the said pretended lien now claimed by the plaintiff and said cross-petitioners; and these defendants aver upon information and belief that the then holders of the bonds which the said cross-petitioners now claim to own tacitly permitted the execution of the said mortgage and sale of the bonds secured thereby and the subsequent foreclosure and sale of said property and the foreclosure of the same by these defendants and the expenditure of large sums of money by these defendants, as hereinbefore alleged and set forth, raising no claim of lien, although fully aware of such proceedings.

These defendants again deny the existence of any such
216 lien as set forth in said cross-petition, and they aver that if any equities ever existed on the part of the holders of said bonds such equities have long since lapsed, and such holders and cross-petitioners and all others claiming through or under them are, by the facts aforesaid, estopped from asserting such lien.

For a fourth defense these defendants say that the plaintiff and cross-petitioners herein ought not to have maintained this said action, because it shows that prior to the commencement of this

action, to wit, on or about the 31st day of May, 1878, one Benjamin Ham and others began a suit in the United States circuit court for the district of Indiana as holders of said equipment bonds on behalf of themselves and all other bondholders similarly situated who might desire to come into the said suit, thereby meaning all the holders of equipment bonds issued by said Toledo and Wabash Railway Company, and in said cause seeking to have said equipment bonds declared a lien upon all the property of the said Toledo and Wabash Railway Company which passed into the hands of the consolidated companies, described in plaintiff's petition and in the cross-petition herein, and upon which the plaintiff and the cross-petitioners seek to assert a lien in this cause; that in said cause thus begun as aforesaid The Wabash Railway Company, The Toledo, Wabash and Western Railway Company, The Wabash, St. Louis and Pacific Railway Company, Isaac H. Knox and James R. Jesup, as trustees, were made defendants and duly served with process therein; that in said cause the said complainants set forth all the facts that are now set forth in plaintiff's petition and in the cross-petition in this cause as to the liens of said bonds, and claimed therein
the right to subject the said property formerly belong-
217 ing to the Toledo and Wabash Railway Company, being the lines of railway in Ohio and Indiana, to the lien of said equipment bonds held by them and also held by other parties and then outstanding, and the defendants above named joined issue with the complainants in said cause, as will fully appear from a transcript of said record, which the defendants will produce upon the trial of this cause; that said cause was upon said issues fully tried in said circuit court of the United States, which thereupon held that all of said equipment bonds constituted an equitable lien upon said property of the Toledo and Wabash Railway Company within the States of Ohio and Indiana, and ordering said property to be sold for the satisfaction of the lien of said equipment bonds and provision to be made for the application of the proceeds to the payment of said bonds; that an appeal was thereupon taken by the defendants to the Supreme Court of the United States, which, upon consideration thereof, reversed said order and decree of the said circuit court, and said cause was thereupon retried by said circuit court, and on said retrial a decree was entered by said circuit court holding that said described property was not subject to the lien of said equipment bonds; that in said cause said court had jurisdiction of the subject-matter and of the parties, and said judgment of the circuit court of the United States entered on the — day of May, 1888, is a complete adjudication of all the questions and matters relating to the lien of said equipment bonds that are sought to be adjudicated in this cause, and is a bar to the proceedings on behalf of the plaintiff in this cause.

Wherefore these defendants ask to be dismissed with their costs

DILLION & SWAYNE,

*Attorneys for Defendants O. D. Ashley, Thos. H. Hubbard,*

218 *James F. Joy, Edgar T. Welles, Purchasing Committee.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Rush Taggart, being duly sworn, says he is one of the attorneys for the defendants, and that he believes the allegations of the foregoing answer to be true, and that this verification is made by him as attorney because the defendants are non-residents of the county of Lucas and now absent from said county.

RUSH TAGGART.

Sworn to before me this 12th day of March, 1889.

[SEAL.] WM. J. HARDING,
*Notary Public, New York and Kings Counties.*

On the 16th day of March, 1889, defendant, by his attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

Fol. 1.

STATE OF OHIO, }
*Lucas County,* } *ss:*

*Answer of James F. Joy.*

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.

And now comes James F. Joy, and by way of answer to the cross-petition of William F. Redmond and others filed herein says that he has no knowledge or information sufficient to form a belief as to the averments in said cross-petition; that the persons named therein are the owners and holders of equipment bonds, and therefore deny all the averments in said cross-petition in that regard as to each of the parties named therein or that the parties named therein are holders for value and before the maturity of said bonds.

219 This defendant further says that he admits that the Toledo and Wabash Railway Company and other companies were duly consolidated in or about the 6th day of July, 1865, into a consolidated corporation of Ohio, Indiana, and Illinois, but he denies that the agreement of consolidation bears the construction set forth in said cross-petition, and craves leave to produce the same upon the trial of this cause.

This defendant further alleges the fact to be that the Toledo and Wabash Railway Company as a consolidated corporation of the States of Ohio and Indiana was formed by the union of two constituent corporations—one a corporation of the State of Ohio and known as the Toledo and Wabash Railroad Company, duly incorporated on or about July 21, 1858, and owning a line of railway

from Toledo, Ohio, to the west line of Paulding county, Ohio; the other a corporation of the State of Indiana known as the Wabash and Western Railway Company, duly incorporated on or about September 27, 1858, and owning a line of railway extending across the State of Indiana, connecting at the east line with the Toledo and Wabash railway and at the west line of the Great Western Railway of 1859. The defendant further says that said two companies became consolidated on or about the first day of November, 1858, the new company thus formed taking the name of the Toledo and Wabash Railway Company.

This defendant further says that the said Toledo and Wabash Railroad Company prior to said consolidation and on or about the 15th day of October, 1858, duly executed and delivered its mortgage or deed of trust to Edwin D. Morgan, of the city and State of New York, and thereby conveyed to said Morgan all its said line of railway and all property appurtenant thereto and all its rights and franchises; that the said mortgage or deed of trust was given to secure an issue of bonds of said company to the amount of
220 $1,000.000, bearing interest at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year thereafter, at the office of said Edwin D. Morgan, or such other place in the city of New York as may be designated; said bonds were made payable to said Morgan or to bearer on the first day of November, 1878, at the same place as the interest coupons. This defendant, further answering, says that the said Wabash and Western Railway Company prior to said consolidation and on or about the 15th day of October, 1858, did duly execute and deliver its mortgage or deed of trust to Edwin D. Morgan, of the city and State of New York, and thereby conveyed to said Morgan all its line of railway and all property appurtenant thereto and all its rights and franchises. The said mortgage or deed of trust was given to secure an issue of bonds of said company to the amount of $1,500,000, bearing even date with the said mortgage and made payable to the said Morgan or bearer on the first day of November, 1878, at the office of Edwin D. Morgan, or such other place in the city of New York as may be designated, said bonds bearing interest at the rate of seven per centum per annum, payable semi-annnally on the first days of May and November in each year, at the same place as said bonds were made payable.

Defendant further says that after the execution of said two mortgages by said companies the same were duly recorded in the States of Ohio and Indiana respectively.

Defendant is advised and believes and therefore avers that all the bonds intended to be secured by each of said mortgages respectively were duly issued and sold for value and are still outstanding and unpaid, together with a large amount of interest now due thereon.

221 Defendant further says that in the year 1878, when both of said issues of bonds matured, the time of payment of the same was extended by agreement between the owners and holders of the same and the Wabash Railway Company until November 1st, 1893,

at the same rate of interest provided for in the said bonds, and that all the interest payments falling due upon said bonds since November 1st, 1884, are now due and unpaid. Defendant also says that the interest coupons due on all of said bonds May and November 1st, 1875, May and November 1st, 1876, and November 1st, 1877, are still outstanding and unpaid, together with interest thereon.

Defendant further says that Edwin D. Morgan departed this life on the 14th day of February, 1883, and that on or about the 9th day of May, 1888, this defendant was duly appointed his successor in said trust by this court under the said Toledo and Wabash Railroad Company's mortgage, and on or about the 9th day of May, 1888, he was duly appointed the successor in said trust of said Morgan, deceased, by the Wabash and Western Railway Company's mortgage by the circuit court of Tippecanoe county, Indiana. This defendant thereupon accepted said trusts and has since been acting as trustee under said mortgages or deed of trust.

This defendant further says that the lien created by said mortgages respectively is superior to all liens upon the property of the said Toledo and Wabash Railway Company save and except a lien in favor of the Farmers' Loan and Trust Company for $900,000 and interest thereon as to the property of Ohio, and a lien in favor of said Farmers' Loan and Trust Company for $2,500,000 and interest thereon as to the property within the State of Indiana.

This defendant further says that on and after the said purchasing committee acquired the interest of the Wabash, St. Louis and Pacific Railway Company, as in said cross-petition described
222 and set forth, that the said circuit courts of the United States for Illinois, Indiana, and Ohio continued their receivers in possession of all said railways and the same continue in possession of said property down to the present time; that subsequent to the institution of the said suit set forth in said cross-petition of the Central Trust Company against the Wabash, St. Louis and Pacific Railway Company *et al.*, one Thomas Atkins and others, bondholders under the consolidated mortgages of 1867 and 1879, filed their bill in the said circuit courts for the foreclosure of said mortgages and made the trustees of all prior mortgages parties thereto. In said suits thus brought receivers of all the lines of railway of the said Wabash, St. Louis and Pacific Railway Company were appointed and put into possession of said properties and have continued in possession ever since to the present time. Subsequently to the institution of said suits the trustees of all the first or divisional mortgages upon the various divisions named as entering into the consolidations in said cross-petitions brought separate suits to foreclose their respective mortgages in said several circuit courts. Subsequently to the institution of said several suits of foreclosure and on or about October 22, 1888, all of said separate suits were duly consolidated into one consolidated cause under the title of James R. Jesup and Isaac H. Knox against The Wabash, St. Louis and Pacific Railway Company *et al.*, consolidated cause, and in said cause upon the bills and cross-bills filed therein the said circuit courts extended the receivership over all said properties, so that from and

after said date the said receivers hold said lines of railway under the first liens thereon and the mortgages of which this defendant is trustee. In said consolidated cause this defendant has filed
223 cross-bills setting up the *the* said mortgages hereinbefore set forth and described, and the said United States courts are proceeding to the foreclosure and sale of said lines of railway and to determine the priority of all the mortgages and liens thereon.

Wherefore this defendant asks that this court may fully ascertain the amount due upon the said mortgages and interest thereon and may declare the same liens upon the said lines of railway in Ohio and Indiana, respectively, and subject only to the liens of the said mortgages to the Farmers' Loan and Trust Company, and superior to any and all other liens whatsoever, and for such other and further relief as equity may require and the facts sustain.

DILLON & SWAYNE,
*Attorneys for James F. Joy, Trustee.*

STATE OF NEW YORK, }
*New York County,* } *ss:*

Rush Taggart, being duly sworn, says he is one of the attorneys of James F. Joy, trustee, and that the said James F. Joy is a non-resident of the county of Lucas and now is absent therefrom, so that on that account this verification is made by his attorney, and that he believes the allegations of the foregoing answer to be true.

RUSH TAGGART.

Sworn to before me this 12th day of March, 1889.

[SEAL.] WM. J. HARDIN,
*Notary Public, New York and Kings Counties.*

On the 26th day of March, 1889, being the 68th day of the January term, 1889, — said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

224 ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH AND WESTERN R'Y CO. *et al.* } 22624.

On motion, leave is given the Farmers' Loan and Trust Company to file answer and cross-petition in fifteen days.

On the 2nd day of April, 1889, being the 74th day of the January term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.* } 22624.

This day came the defendants William F. Redmond, John B. Manning, Wm. M. Kohn, and Edward Popper, under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin M. Ham, partners under the firm name of Ham Brothers; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Chas. S. Webb, Jane A. Sullivan, Ella R. Johnson, Chas. E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, under the firm name of Rollins and Co.; Eugene E. Bishop, Frederick Hubbard, Wm. C. Creamer, George B. Mead, George B. Mead and Walter M. Atkinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Bros. Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, and Mary Oliveira, and also other parties plaintiff and defendant, and thereupon leave was given the aforesaid cross-petitioners to file reply to the answer of Joy and other defendants within thirty days.

225 On the 8th day of April, 1889, defendant, by its attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

*Answer of the Farmers' Loan and Trust Company to the Cross-Petition of William F. Redmond and Others.*

In the Court of Common Pleas, Lucas County, State of Ohio.

ADELBERT COLLEGE, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

The Farmers' Loan and Trust Company, for answer to the cross-petition of William F. Redmond and others, admits that it is a corporation created under the laws of the State of New York, and further admits that it makes the claim in said petition alleged as to the Toledo and Wabash Railway Company and as to the execution by the Toledo and Illinois Railroad Company of the mortgage and bonds therein set forth, and defendant says that the facts in relation thereto are more fully stated as follows:

That at and prior to the 8th day of September, 1853, the Toledo and Illinois Railroad Company was a corporation incorporated and organized under the laws of the State of Ohio, and as such was the owner of a line of railway extending from Toledo, Ohio, to the west line of Paulding county, in said State. The said Toledo and Illinois Railroad Company, on or about the 8th day of September, 1853, made and executed its nine hundred (900) bonds for one thou-

sand dollars each, bearing date of the first day of August, 1853, and payable to the Farmers' Loan and Trust Company or bearer, at its office in the city of New York, on the first day of August, 1865, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of August and February in each year, until the principal sum should be paid, on presen-
226 tation and surren-er of the coupons and interest warrants thereto annexed, as they should severally become due, at the office of the Farmers' Loan and Trust Company in the city of New York. To secure the payment of the principal of said bonds and of the interest thereon as the same should become due and payable, as evidenced by the coupons thereto attached, the said Toledo and Illinois Railroad Company duly made, executed, and delivered to this defendant, The Farmers' Loan and Trust Company, as trustee, a mortgage or deed of trust, bearing date of the eighth day of September, 1853, and thereby conveyed to this defendant, as trustee, its railroad from the city of Toledo to the west line of Paulding county, made and to be made, including the right of way and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other material and machinery used thereon or procured therefore, including the furniture and equipments of the road and those to be furnished or paid for with the above-described bonds, and the bridges, viaducts, culverts, fences, depot grounds, and buildings erected or to be erected thereon, and all franchises, rights, or privileges of said railroad company in, to, or concerning the same; that said mortgage or deed of trust was forthwith duly recorded in the office of the recorders in each of the counties through which the said railroad was situated or to be situated, and became a first and prior lien on all the railroad property, equipments, and franchises therein mentioned and described.

That thereafter and subsequent to the said 8th day of September, 1853, the said Toledo and Illinois Railroad Company, mortgagor as aforesaid, duly issued all of the said bonds secured by said mortgage and the same are now outstanding in the hands of divers persons and corporations, owners and holders thereof for value.

The Lake Erie, Wabash and St. Louis Railroad Company,
227 on or about the 25th day of June, 1856, was a corporation duly incorporated and organized under the laws of the State of Indiana and was the owner of the railway extending from the western boundary of the State of Ohio at the western terminus of the Toledo and Illinois railroad as aforesaid across the State of Indiana to the southern boundary of Illinois. On or about the said 25th day of June, 1856, the said Toledo and Illinois Railroad Company and the said Lake Erie, Wabash and St. Louis Railroad Company duly consolidated under the name of the Toledo, Wabash and Western Railway Company; that thereafter under decrees of foreclosure and sale rendered by the circuit court of the United States for the northern district of Ohio and of the circuit court of the United States for the district of Indiana, in Ohio and Indiana, all the railroad property, rights, and franchises of said consolidated corporations were on the 8th day of October, 1858, duly sold and that portion of said line

lying and being within the State of Ohio was at sale purchased by Azariah Boody, and by said purchaser that portion of the said property situate in the State of Ohio and formerly owned by the Toledo and Illinois Railroad Company was conveyed to the Toledo and Wabash Railroad Company, a corporation duly incorporated July 21st, 1858, under the laws of the State of Ohio, and that portion lying within the said State of Indiana was conveyed to the Wabash and Western Railway Company, a corporation duly incorporated September 27th, 1858, under the laws of the said last-named State, but the said sale of the railroad and property of the Toledo, Wabash and Western Railway Company was made subject to the mortgage of this defendant, hereinbefore set forth.

In the month of October, 1858, the Toledo and Wabash Railway Company and the Wabash and Western Railroad Company
228 aforesaid were duly consolidated under and by virtue of the laws of the States of Ohio and Indiana and thus formed the Toledo and Wabash Railway Company, being the same company in said cross-petition alleged to have issued the equipment bonds therein set forth. This defendant admits that the said Toledo and Wabash Railroad Company, the Great Western railroad of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company entered into the agreement for consolidation set forth in said cross-petition and admits that said agreement of consolidation was carried into effect, whereby was formed the Toledo, Wabash and Western Railway Company, a consolidated corporation of the States of Ohio, Indiana, and Illinois, owning a line of railroad beginning at the city of Toledo, in the State of Ohio, and extending thence westward through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the boundary line of the State of Indiana, being the railroad or property covered by the aforesaid mortgage to this defendant, and thence westward through the States of Indiana and Illinois.

Defendant further alleges that the said agreement of consolidation enumerated, among others, the bonds and mortgage executed by the Toledo and Illinois Railroad Company, as hereinbefore set forth, and by said agreement the payment of the principal of said bonds and the interest to mature thereon was expressly assumed and agreed to be paid by the said Toledo, Wabash and Western Railway Company. Afterwards, on or about the first day of August, 1865, an agreement was duly made between the several holders of said bonds made and issued — said Toledo and Illinois Railroad Company and the Toledo, Wabash and Western Railway Company, by which the time for the payment of the principal of said bonds was extended until August 1st, 1890, interest to be paid thereon at the rate
229 and times in said bonds provided, and additional coupons providing for the payment of semi-annual installments of interest of three hundred and fifty dollars each to accrue in accordance with the terms of said agreement on the first day of February and August in each year during said twenty-five years were issued and annexed to said bonds by said Toledo, Wabash and Western Railway Company.

Defendant admits the execution by the Toledo, Wabash and Western Railway Company in 1873 of the mortgage in said cross-petition called the gold mortgage upon the entire line of railway and property of said company last aforesaid. Defendant further admits the allegations of said cross-petition as to the foreclosure of said mortgage and the sale and conveyance of said mortgaged property to John W. Ellis and others as purchasers.

Defendant further admits that said sale was subject to prior liens, and further says that said decree has expressly found and adjudged the said mortgage to this defendant to be a first and best lien upon so much of the said line of railway as laid within the State of Ohio, extending from Toledo to the State line between Ohio and Indiana. Defendant further admits that said John W. Ellis and others conveyed all of the said line of railway property, rights, and franchises of the Toledo, Wabash and Western Railway Company so purchased by them to said consolidated Wabash Railway Company, and thereby said Wabash Railway Company became vested with the title of said lines of railway, equipments, rights, and franchises, but subject, however, to prior lien of this defendant under and by reason of the mortgage hereinbefore set forth upon the property therein mentioned and described.

Defendant further admits the consolidation of the Wabash Railway Company with the St. Louis, Kansas City and Northern Railway Company, thereby forming the company known as the
230 Wabash, St. Louis and Pacific Railway Company, and that the said last-named company succeeded to and became the owner of all the rights, franchises, premises, property, railway line, and equipment of the Wabash Railway Company, and the Toledo, Wabash and Western Railway Company, but subject, however, to the prior lien of this defendant under and by reason of the mortgage hereinbefore set forth upon the property therein mentioned and described. Defendant further says that the Toledo, Wabash and Western Railway Company, the Wabash Railway Company, and the Wabash, St. Louis and Pacific Railway Company successively paid the new coupons issued by said The Toledo, Wabash and Western Railway Company and annexed to said bonds of the Toledo and Illinois Railroad Company at the times of their maturity, until February 1st, 1885, at which time the said The Wabash, St. Louis and Pacific Railway Company failed to pay the interest coupons which then became due, and that default has been made in payment of the interest coupons annexed to said bonds maturing since said February 1st, 1885, although the payment of the same was duly demanded at the respective dates of maturity thereof; that the coupons due February 1st, 1885, August 1st, 1885, February 1st, 1886, and August 1st, 1886, have since been paid by the receivers appointed, as hereinafter stated, leaving unpaid all subsequent coupons and the entire principal of said bonds. This defendant admits that the Wabash, St Louis and Pacific Railway Company, on or about May 28th, 1884, filed its bill in equity in the circuit court of the United States for the eastern district of Missouri, and that similar suits were instituted by the same complain-

ant in the said several circuit court- of the United States in said cross-petition mentioned.

Defendant further says that in said suits an order was made directing the receivers therein named to take possession of all the lines of railway property, franchises, and rights of the said Wabash, St. Louis and Pacific Railway Company, and that in accord-
231 ance with said order the said receivers did take such possession and said receivers continued in possession of the said lines of railway and property in the States of Ohio, Indiana, and Illinois until a successor was appointed as hereinafter set forth. Defendant says that subsequently, on or about December 17th, 1886, Thomas F. Atkins and other holders of bonds issued under and secured by the mortgage alleged in said cross-petition to have been executed by the Toledo, Wabash and Western Railway Company in 1867, and the mortgage alleged in said cross-petition to have been executed by the Wabash Railway Company in 1879, filed their bill in the circuit courts of the United States for the southern district of Illinois, the district of Indiana, and northern district of Ohio, western division, to foreclose said last-mentioned mortgages; that in said suit of Atkins and others, on or about December 18th, 1886, an order was made by the said several circuit court- of the United States in which their said bill had been filed appointing a receiver of all the lines of railway and property of said The Wabash, St. Louis and Pacific Railway Company in the said States of Illinois, Indiana, and Ohio in the place and stead of the receiver appointed as hereinbefore stated, and said receiver thereupon entered onto possession of said lines of railway and property, including the property mentioned and described in the mortgage from the said Toledo and Illinois Railway Company to this defendant, and said receiver and his successor, duly appointed thereafter, have continued in possession of said property ever since to the present time; that John N. A. Griswold and others, bondholders under said mortgage alleged in said cross-petition to have been executed by the Toledo and Wabash Railway Company on or about the 15th day of October, 1887, filed their cross-bill in foreclosure of said last-mentioned mortgage in said suits of Thomas F. Atkins, and by said cross-bill this
232 defendant and trustees of all prior mortgages upon said lines of railway of the said Wabash, St. Louis and Pacific Railway Company in the States of Ohio, Indiana, and Illinois were made parties defendant, and this defendant, on or about October 22nd, 188–, filed its answer to said cross-bill, duly setting up the mortgage of the Toledo and Illinois Railroad Company to this defendant. Subsequently to the institution of said suits of Thomas F. Atkins and others this defendant and all the trustees of the several first mortgages upon the different divisions of the lines of railway acquired by the Wabash, St. Louis and Pacific Railway Company as set forth in said cross petition brought separate suits in the said several circuit courts of the United States for the southern district of Illinois, district of Indiana, and northern district of Ohio, western division, to foreclose their respective mortgages, and that the bill of this defendant was filed in the circuit court of the United States of

the northern district of Ohio, western division, to foreclose the aforesaid mortgage of the Toledo and Illinois Railroad Company, and on or about October 22nd, 1888, the said several suits of the said trustees of the prior mortgages aforesaid were duly consolidated into one cause under the title of James R. Jesup and Isaac H. Knox against the Wabash, St. Louis and Pacific Railway Company and others consolidated in said consolidated cause upon the bills and cross-bills filed therein the said circuit court extended the receivership over all said property and lines of railway of the Wabash, St. Louis and Pacific Railway Company, so that from and after the said date the said receivers held said lines of railway and property under mortgages, constituting the first lien thereon, including the mortgage to this defendant as trustee heinbefore set forth; that in said consolidated cause on or about the 30th day of March,
233 1889, the said circuit court of Illinois, Indiana, and Ohio rendered a decree, finding and adjudging the priority of liens upon the lines of railway property of said The Wabash, St. Louis and Pacific Railway Company, and finding the lien of this defendant to be first and best upon the portion of said railway in the State of Ohio, extending from Toledo to the State line of the State of Indiana, and ordering a sale of all of said lines of railway, including that upon which defendant was found to have the first lien as aforesaid to satisfy the amount due upon the bonds secured by the said several mortgages in the order of the priority of their respective liens as found by said decree.

Wherefore this defendant prays that if the court shall grant the prayer of said cross-petition and marshal the said liens and encumbrances on said railroad and property, and ascertain and adjudge their priority, that an account may be taken of the amount due or to become due by the way of principal and interest upon said bonds of the Toledo and Illinois Railroad Company aforesaid, and that the same may be declared a first and prior lien upon the said property and lines of railway in the State of Ohio, mentioned and described in said mortgage from the Toledo and Illinois Railroad Company, and first paid out of the proceeds of any sale of the said property and lines of railway; and this defendant further prays that it may have such other and further relief in the premises as it may be entitled to.

By SWAYNE, SWAYNE & HAYES,
*Defendants' Attorneys.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

Frank B. Swayne, being first duly sworn, says that he is one of the attorneys for the Farmers' Loan and Trust Company, and that
234 the facts stated in the foregoing answer are true, as he verily believes.

FRANK B. SWAYNE.

Sworn to before me and subscribed in my presence this — day of April, A. D. 1889.

[SEAL.] CHARLES D. SUMNER,
*Notary Public in and for Lucas Co., O.*

On the 15th day of April, 1889, being the 7th day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY *et al.* } 22624.

This day this cause coming on for hearing on the motion to set aside service of summons on James Compton, and the court on consideration thereof overrule- the same; to which ruling and order of the court defendants except, and leave given to answer.

On the 15th day of April, 1889, defendant, by his attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

Court of Common Pleas, Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.*, Defendants. } No. 22624.

*Answer of James Compton.*

The defendant for answer to the plaintiff's petition says
235 that he has no knowledge of the ownership by the plaintiff of any of the bonds in said petition described, and therefore denies that said plaintiff holds or owns any of said bonds. The defendant admits that he has obtained a final decree in the supreme court of the State, and that the same is remanded to this court for execution, and that the same is of record in the records of this court as provided by law; that defendant caused to be issued an order of sale and said property to be appraised, but he denies any right in the plaintiff or any one else to any decree concurrant or coequal with the plaintiff upon any part of said property; denies that plaintiff has any lien upon said premises except the same be inferior and subsequent to the lien of this defendant; and this defendant refers to the record and proceedings in said cause of this defendant against the said The Wabash, St. Louis and Pacific Railway Company and others in which his said decree was rendered, and makes the same a part hereof the same as if the same was fully herein set out.

And this defendant, for answer to the said petition and amended and supplemental petition of plaintiff and the cross-petition of William F. Redmond and others herein, filed on January 5th, 1889,

says that he denies the ownership of the said plaintiff and said cross-petitioners and each of them of any of the bonds set forth in said petition and cross-petition respectively, and that there are any other of said bonds outstanding in the hands of divers and sundry persons, partnerships, and corporations whomsoever or that there is anything due said plaintiff or said cross-petitioners or either of them upon any of the bonds or coupons in said petition or cross-petition set forth; and this defendant denies each and every allegation in said amended and supplemental petition and said cross-peti-
236 tion contained on the subject of the ownership or the validity of any of said bonds therein alleged to be owned by the plaintiff or said cross-petitioners or either of them.

This defendant admits that he is the owner of one hundred and fifty thousand dollars of said bonds, known as equipment bonds, and that he has recovered a judgment and decree thereon for his own benefit and not for the benefit of any other bondholder for a sale of so much of the said railway as in within the State of Ohio, with its accretions and additions.

But this defendant denies that his lien under his said decree and judgment or the right of any purchaser of said property or any of it thereunder is not and will not be superior to that of the said cross-petitioners or of the plaintiff, but is only a lien and incumbrance of equal dignity and priority, the benefits of which must be shared in proportion to the amounts of said bonds by them respectively held. This defendant admits that said cross-petitioners or some of them appeared in this court in the action of this defendant against said Wabash, St. Louis and Pacific Railway Company and others, and moved the court for leave to be made defendants therein, but defendant says that such action was not taken by any of them until after the final decree had been rendered in said cause by the supreme court of the State of Ohio in favor of said Compton, finding the amount due him on his individual bonds owned by him, and ordering the sale of the said property in Ohio on default for ten days in the payment of said sum, and after the said supreme court had by its mandate to this court commanded it to carry said decree into execution, reference being had to said record and decree hereby; that before such action had been taken by or for said cross-petitioners or any of them said action had been pending for over eight years, and had resulted as aforesaid in a final de-
237 cree for the plaintiff.

He admits that court refused to allow said parties to intervene in said suits and overruled their said motions. He admits that he resisted said motions thus made after the said final decrees of the Supreme Court and mandate to this court, but avers that it was the only effort ever made by said cross-petitioners, or any of them, to prosecute their said claims, or to be made parties to said suit, and he denies that any of them ever diligently made or pursued any attempt to be made parties to said suit, or any attempt until the one aforesaid after final decree and after this defendant had spent over eight years in litigation of his said claim and at a very large expenditure of labor, time and money. On the contrary, this defendant

avers that the litigation in reference to said bonds of this defendant was commenced, conducted, and carried on to final judgment without the aid or assistance or the offered aid or assistance of any of said cross-petitioners or any other holder of said equipment bonds; that none of said cross-petitioners and no other holder of any of said equipment bonds ever took any step or proceedings of any kind in the court of Ohio to enforce their said lien, although the facts of the commencement and pendency of said suit of this defendant was notorious and well known to said bondholders; and defendant says that on the sixteenth day of May, 1878, one Davis J. Tyson commenced a suit in the circuit court of Fountain county, Indiana, against the said Wabash Railway Company and others to enforce the lien of certain of said equipment bonds for the benefit of himself and such other equipment bondholders similarly situated as might desire to come into said suit and contribute to the expense thereof; that said suit was removed to the United States Court for the district of Indiana, and there came into the same and were made parties thereto the following, to wit: Benjamin F. Ham, Edward D.
238 Rose, Henry A. Mott, John W. Ferdon, Charles Jackson, G. M. Whittemore, Townsend Underhill, M. L. Underhill, and Thomas N. Mays, and none others, the said parties setting up therein their bonds or the bonds *cal*imed by them; that said suit was tried in said circuit court of the United States for the district of Indiana and a decree for the said bondholders rendered therein. An appeal was taken therefrom to the Supreme Court of the United States, and in May, 1885, said case — decided against the said bondholders and the lien by them claimed; that said suit was decided some three years before the decision of the supreme court of the State of Ohio in favor of this defendant in his action aforesaid. Except the said Benjamin F. Ham, who is the same person of that name who is a cross-petitioner herein and upon the same bonds, none of said cross-petitioners ever took any steps whatever to enforce their said bonds, to commence any action thereon, or to aid in any manner or form, or contribute anything to the expense of said litigation by this defendant, although the pendency and effect of the decisions in both of said cases was well known to said cross-petitioners and was public, and by the exercise of any diligence on their part or the part of any of them the same would have been known and the necessary actions or proceedings commenced to protect their said rights or liens, if any they have; but said parties and each of them have been guilty of laches and neglect in sleeping upon their rights in the premises and in not asserting the same.

That this defendant has been compelled unaided and alone to prosecute his said suit and to obtain and maintain his said decree for a period of over eight years, with an expenditure of time, money, and labor exceeding in value the sum of fifty thousand dollars, and none of said cross-petitioners of said plaintiff ever took any steps until after said defendant had succeeded in establishing his
239 said lien, by the final decree aforesaid, and until after the mandate had been filed herein and the property appraised under the decree aforesaid, to aid in said litigation or to commence

any action in their own behalf, or to take any action whatever in the premises, but are seeking now to reap the benefit of this defendant's efforts in his said suit and to participate in the results of his said litigation after the same has ended and resulted in a decree in his favor as aforesaid, and this defendant, referring to the said decree of the supreme court of Ohio and the mandate of said court to this court filed in said action of this defendant, says that the said supreme court found due to this defendant, and ordered the same paid to this defendant within ten days from the entry thereof, the sum of three hundred and thirty-nine thousand eight hundred and twenty dollars and forty cents and interest thereon from the first day of May, 1888, and in default thereof ordered the said property therein described sold to pay the same, and that said property be sold subject only to two certain mortgages therein described, and that said property be appraised and sold subject to said two mortgages and no other lien or claim, and that said decree is a final decree and settles the rights of this defendant and all other parties to said action; that no one else, whether the plaintiff or any of the cross-petitioners herein or any other person, has any interest in said decree of plaintiff or the amount found due him or the proceeds of any sale made thereunder to the extent of the judgment of this defendant and interest or any part thereof; that said decree would be impossible of execution if the claim of these cross-petitioners or of said plaintiff to participate therein was or could be allowed, and any lien or claim of said plaintiff or of said cross-petitioners and each of them, if any they have, is inferior and
240 subject to the lien and claim of this defendant as determined by his said decree; and defendant avers that after the commencement of his said suit in this court and after his *pendens* had been fully established as to all the parties thereto, being all the persons and corporations who were necessary parties thereto, to wit, June 1st, 1880, the said $50,000,000 mortgage was executed and the bonds placed upon the market and sold so far as they were sold.

That said mortgage was foreclosed as stated and said property purchased by said puschasing committee and all the proceedings had and steps taken recited in said cross-bill whereby new rights were created in said property and new parties became the owners thereof, all of whom took their said rights or interests charged with notice of and subject to the rights and equities of this defendant as by his action they were alleged and finally adjudicated, but without any notice of any claim of said cross-petitioners or any of them and without any steps being taken by them or any of them to assert or enforce any lien or claim upon said property, although fully aware of all such proceedings and transactions, and any equity which said cross-petitioners or any of them may have had are now lapsed and varred and said cross-petitioners and each of them estopped from asserting the same.

This defendant admits the execution by the Wabash, St. Louis and Pacific Railway Company of the $50,000,000 mortgage to the Central Trust Company and James Cheney, as alleged in said cross-petition, and the issue and sale of said $17,000,000 of bonds; also

the commencement of proceedings to foreclose the same, the appointment of receivers, and the subsequent proceedings therein, including the sale of said property to the purchasing committee, Joy, Ashley, Hubbard, and Welles, and the confirmation of said sale, and avers that there has been subsequently commenced in the
241 said United States circuit courts for the western division of the northern district of Ohio and the circuit court for the district of Indiana and the circuit courts in Illinois certain suits for the foreclosure of mortgages on said property, to wit, one suit by Thomas B. Atkins and others as bondholders under the mortgages of 1867 to Jesup and Knox, trustees, and the mortgages of 1879 to Humphreys and Lindley, trustees, and also a suit by said Jesup and Knox as trustees to foreclose said mortgage of 1867; also a suit by the Farmers' Loan & Trust Company to foreclose said first mortgage on the Ohio property made by the Toledo and Illinois Railroad Company in 1853, which two last-named suits have been consolidated with and under the title of the said Jesup and Knox suit, and to which suits all the mortgage-s of said property or any part of it are parties and have answered or filed cross-bills therein, and in which suits receivers of all the property of said railway companies, including all the property described in said petition and cross-petition herein, were appointed and took actual control and possession of all said property and still retain such actual control and possession; that such suits were commenced in said United States circuit courts long after the commencement of this defendant's suit, in which he has obtained *in* his said decree, but long before the filing of said cross-petition or the commencement of any proceeding or taking of any steps by said cross-petitioners or any of them to enforce their alleged liens, and said receiver was appointed and had actual possession and control of said property and said United States circuit court was proceeding to adjudicate the rights of the parties and the liens on said property long before any such action or proceeding by said cross-petitioners, and to which suits in the said Federal courts all of the mortgage-s of prior date to the alleged lien
242 of the plaintiff and cross-petitioners and all of the railroad companies were and are parties, and in which there has now been entered by said circuit courts of the United States a decree for the sale of all of said property; that said defendant was brought into said suits in the United States courts *in invitum* before any pleadings filed herein by said cross-petitioners or any of them and before any application was made for leave to plead herein by said cross-petitioners or any of them, and he has been compelled by said court to appear therein and answer, setting up his said lien and rights in the premises and in the property aforesaid, and, while the jurisdiction of said Federal courts was acquired after the jurisdiction of this court in the suit of this defendant aforesaid, the said Federal courts acquired jurisdiction and possession of all of said property before any action of any kind was commenced by said cross-petitioners or any of them; that the record in said suits in said United States circuit courts is so voluminous that it would be impracticable to file copies of the same herein, but defendant will produce

or prove the same on the trial hereof; and this defendant denies everything in said amended and supplemental petition of the plaintiff alleged or contained not hereby specifically admitted or denied. He admits the corporate character of the various railroad companies; the consolidation of the same; the terms of the consolidation agreement of 1865; the execution of the various mortgages; the decree of foreclosure in this court in 1875; the sale and reorganization of said railroad company and the consolidations under the name of the Wabash, St. Louis and Pacific Railway Company, as alleged in said petition and cross-petition, and deny every other allega-
243 tion in said petition and cross-petition not herein specifically admitted or denied.

JOHN G. MILBURN &
DOYLE, SCOTT & LEWIS,
*Att'ys for James Compton.*

THE STATE OF OHIO, } ss:
*Lucas County,* }

John H. Doyle, being duly sworn, says he is one of the attorneys for the defendant James Compton herein; that said James Compton is absent from and a non-resident of the State of Ohio, and that the facts stated and the allegations contained in the above answer are true as he believes.

JOHN H. DOYLE.

Sworn to before me and subscribed in my presence this 15th day of April, 1889.

N. HADNETT,
*Deputy Clerk, Lucas County, O.*

On the 17th day of April, 1889, there was filed in said court a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others, Defendants.

On cross-petition of William F. Redmond and others.

To the clerk of the court of common pleas, Lucas county, Ohio:

You will please issue a summons upon the cross-petition of William F. Redmond and others (for full names of cross-petitioners see cross-petition on file in your office), directed to the sheriff of Hamilton county, Ohio, commanding him to summom The Toledo, Wabash

and Western Railway Company as a defendant to said cross-petition, as required by law.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

Toledo, April 17, 1889.

244 Thereupon a summons in said cause was issued by the clerk of said court to the sheriff of Hamilton county; which summons is in the words and figures following, to wit:

THE STATE OF OHIO, } *ss:*
*Lucas County,* }

To the sheriff of Hamilton county:

You are commanded to notify the Toledo, Wabash and Western Railway Company that it has been sued by William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper and Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins and Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead; George B. Mead and Walter M. Atkinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, on cross-petition in the case of The Adelbert College of the Western Reserve University against The Wabash, St. Louis and Pacific Railway Company and others in the court of common pleas of Lucas county, and that unless it answer by the 18th day of May, A. D. 1889, the cross-petition of the said above-named defendants against it filed in the clerk's office of said court such cross-petition will be taken as true and judgement rendered accordingly. You will make due return of this summons on the 29th day of April, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal
245 thereof, at Toledo, this 17th day of April, A. D. 1889.

[SEAL.]

J. P. BRONSON, *Clerk,*
By N. HADNETT,
*Deputy Clerk.*

Said summons was endorsed as follows, to wit: Summons in action on cross-petition of William F. Redmond *et al.* Equitable relief prayed for. George Hoadley, John C. F. Gardner, & Lee & Brown, attorneys for cross-petitioners.

On the 23rd day of April, 1889, said summons was filed with the sheriff's return thereon written in the words and figures following, to wit:

THE STATE OF OHIO, }
*Hamilton County.* }

Received this writ April 19th, 1889, and pursuant to its command I summoned, on the 22d day of April, 1889, the within-named defendant, The Toledo, Wabash and Western Railway Company, a corporation, by delivering a true copy of this writ, with all the indorsements thereon, personally to Jacob D. Cox, last acting president of said company.

LEO. SCHOTT, *Sheriff*,
By GEO. W. DRAPER, *Dep.*

On the 29th day of April, 1889, being the 19th day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, MO., *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } 22624.

Now comes Charles G. Peters and moves the court for leave to file an answer and cross-petition in the above-entitled cause, which leave is hereby granted and the said answer and cross-petition are filed accordingly.

246 Now come William F. Redmond and others, cross-petitioners, who have heretofore filed their answer and cross-petition, and present the affidavit of William F. Redmond, from which it appears that the Toledo, Wabash and Western Railway Company, the Wabash Railway Company, and the Wabash, St. Louis and Pacific Railway Company are and each of them is a defendant to said cross-petition and a proper party to this cause, and that each of them is a corporation organized under the laws of the State of Ohio and, as such, interested in real and personal property within the jurisdiction of this State, being the same described in the answer and cross-petition of said Redmond and his co-cross-petitioners, namely the railway and equipment of the railway company known as the Wabash, St. Louis and Pacific Railway Company, previously of the Wabash Railway Company, and before that time of the Toledo, Wabash and Western Railway Company, extending from Toledo, in said Lucas county, through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the State line of Indiana, and thence through the State line of Indiana to the boundary line of the State of Illinois, and that there is no present officer, agent, or director of either of said corporations within the State of Ohio upon whom service of summons in this cause can be made except Jacob

D. Cox, now residing in Cincinnati, Hamilton county, Ohio, who was the last president of the Toledo, Wabash and Western Railway Company, and that Cyrus W. Field, of the city of New York, is the last president of the Wabash Railway Company, and that James F. Joy, of Detroit, in the State of Michigan, is the president of the Wabash, St. Louis and Pacific Railway Company, and that no successor has been chosen or elected to the office of the president of said companies to said Cox, Field, and Joy respectively; and it further appears that the summons has been issued to Hamil-
247 ton county, Ohio, against the said Toledo, Wabash and Western Railway Company for service upon the said company by delivery of same to Jacob D. Cox, its last president aforesaid; and thereupon the court granted leave to James F. Joy, Ossian D. Ashley, Edgar T. Welles, and Thomas F. Hubbard, the purchasing committee of the Wabash railway, and to James F. Joy *leave to* file supplemental answer instanter; wherefore it is ordered and adjudged by the court that the said Toledo, Wabash and Western Railway Company be made defendant to the said cross-petition of the said William F. Redmond and others by service of the summons aforesaid so as aforesaid issued to the sheriff of Hamilton county, and that George W. Vultee, of the city of New York, be authorized to make service of summons upon the Wabash Railway Company by delivering a copy thereof to Cyrus W. Field, the last known president of the said Wabash Railway Company, and that Thomas W. Wheeler, of the city of Toledo, Ohio, be authorized to make like service of summons upon the Wabash, St. Louis and Pacific Railway Company by delivery of a copy thereof to James F. Joy, the last known president of said Wabash, St. Louis and Pacific Railway Company.

On the 29th day of April, 1889, defendants, by their attorneys, filed in said court a supplemental answer in said cause; which supplemental answer is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County*, }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants. } No. 22624.

And now comes James F. Joy, Ossian D. Ashley, E. T. Welles, and Thomas H. Hubbard and, by leave of court first had, files this their supplemental answer in this cause and say that since
248 the filing of their answer in this cause the United States circuit court for the southern district of Illinois, for the district of Indiana, and for the northern district of Ohio, western division, have duly entered decrees in this cause, wherein James R. Jesup

and Isaac H. Knox were complainants *vs.* The Wabash, St. Louis and Pacific Railway Company were defendants, being the same cause stated in and by this defendant in their original answer in this cause; that said decrees were decrees for foreclosure and sale under all the mortgages existing against said railway lines and property formerly belonging to the Wabash, St. Louis and Pacific Railway Company and fixing and determining the amount and priority of the liens upon said property and providing for a sale of all said properties, franchises, and interests to satisfy the said liens; that in accordance therewith the commissioners appointed by said court have appointed the 15th day of May, 1889, as the day for the sale of the said properties, the same to take place at the United States court-house in the city of Chicago, in the State of Illinois. These defendants say that they attach a copy of said decree to this their answer, the said decree being the same as entered in each of said courts.

DILLON & SWAYNE,
*Att'ys for James F. Joy, Ossian D. Ashley, Edgar T. Welles, and Thomas H. Hubbard, Purchasing Committee.*

STATE OF NEW YORK, *New York County,* } *ss:*

Ossian D. Ashley, being duly sworn, says that the foregoing supplemental answer is true, as he verily believes.

OSSIAN D. ASHLEY.

Sworn to before me this 23rd day of April, A. D. 1889.
[SEAL.]
WM. J. HARDIN,
*Notary Public, New York & Kings Cos.*

249 Circuit Court of the United States, Southern District of Illinois, District of Indiana, Northern District of Ohio.

JAMES R. JESUP and EDWARD H. DIXON, Complainants, *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants. } Consolidated Cause and Ancillary Causes.

*Decree. Allowed March* 23, 1889.

Foster & Thomas, solicitors for complainant.

In the Circuit Court of the United States for the Southern District of Illinois, the Twenty-third Day of March, 1889.

Present: The Honorable Walter Q. Gresham, circuit judge.

JAMES R. JESUP and EDWARD H. DIXON, Complainants,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILway Company, Solon Humphreys and Thomas E. Tutt, as Receivers of the said Wabash, St. Louis and Pacific Railway Company; Solon Humphreys, The Farmers' Loan and Trust Company, Alexander M. White, Henry H. Warden, John T. Terry, Alfred T. White, James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, Edgar T. Welles, The Central Trust Company of New York, as Substituted Trustee; The St. Louis, Iron Mountain and Southern Railway Company, The Missouri Pacific Railway Company, Daniel A. Lindley, The Central Trust Company of New York, James Cheney, Jay Gould, A. Lawrence Hopkins, S. Fisher Johnson, Edward Popper, J. Harson Purdy, Edwin Parsons, Maximilian Herschel, The Mercantile Trust Company, John McNulta, as Receiver of the Property Formerly of the Wabash, St. Louis and Pacific Railway Company Lying East of the Mississippi River; James Compton, The Metropolitan National Bank, David G. Legget, John N. A. Griswold, Defendants.

250

In Chancery.
Consolidated Cause.

This cause having come on in due course to be heard upon the pleadings and proofs of the respective parties and on all the papers and proceedings herein and on the report of Bluford Wilson and A. J. Ricks, the special masters heretofore appointed herein, which report bears date and was filed on the first day of February, 1889, and on the exception filed thereto, and it appearing to the court that all the parties hereto except the defendants Jay Gould and A. Lawrence Hopkins have been duly served with process or have duly entered their appearance herein or have been notified of the pendency of this cause by personal service without the district as heretofore ordered by the court more than thirty days since, and the same having been duly argued by counsel and due deliberation having been had, it is ordered and adjudged that the said exceptions be, and the same hereby are, overruled, and that the report of the said special masters be, and the same hereby is, in all things approved and confirmed; and the court, being fully advised in the premises, doth hereby find:

1. That the Toledo and Illinois Railroad Company was a corporation duly incorporated under and by virtue of the laws of the State of Ohio on or about the twentieth day of April, 1853, for the purpose

of constructing, owning, and maintaining a railroad from the city of Toledo, in said State of Ohio, in a direction towards the town of Fort Wayne, in the State of Indiana, to a point on the west boundary line of the State of Ohio, in the township of Harrison, in
251 the county of Paulding, in said State of Ohio; 2, that thereafter the said Toledo and Illinois Railroad Company made and executed its nine hundred bonds for one thousand dollars each, bearing date the first day of August, 1853, payable on the first day of August, 1865, with interest at the rate of seven per centum per annum, payable semi-annually on presentation and surrender of the coupons thereto attached as they should severally become due; 3, that to secure the payment of the principal of the said bonds and of the interest thereon as the same should from time to time become due, the said Toledo and Illinois Railroad Company duly made, executed, and delivered to the Farmers' Loan and Trust Company, as trustee, a mortgage or deed of trust, bearing date the eighth day of September, 1853, and thereby conveyed to the said trustee, upon the trusts therein stated, all the property of the said railroad company—that is to say, their road made and to be made, including the right of way and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials and machinery used thereon or procured therefor, including the furniture and equipments of the road and those to be furnished or paid for with the above-described bonds and the bridges, viaducts, culverts, fences, depot grounds and buildings, erected or to be erected thereon, and all franchises, rights, or privileges of the said railroad company of, in, to, or concerning the same; 4, that the said mortgage was thereafter *after* duly recorded in all the counties through which the said railroad ran or in which it was situated and became and is a first and prior lien of all the railroad property, equipments, and franchises therein mentioned and described, and that all of the said bonds thereby secured were issued and are now outstanding in the hands of divers persons and corporations, owners and holders thereof
252 for value; 5, that the time for the payment of the principal of the said bonds was thereafter, at maturity, extend*ing* to the first day of August, 1890, at the same rate of interest; 6, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation as hereinafter stated to said Toledo and Illinois Railroad Company, failed to pay the interest maturing on said bonds on the first day of February, 1885, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of the maturity thereof; that the coupons due February 1, 1885, and August 1, 1885, and February 1, 1886, and August 1, 1886, have since been paid by the receivers appointed as hereinafter stated, leaving unpaid all subsequent coupons; 7, that there is now owing and unpaid for principal and interest upon said bonds, together with interest upon the several unpaid installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of one million and sixty-six thousand nine hundred and fifty dollars, together with interest

on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded debt bonds; 8, that the holders of more than one-half of the bonds outstanding and secured by said mortgage by notice in writing have required the said trustees to proceed to enforce the security provided by said mortgage and to foreclose the same and to collect the principal and interest due upon said bonds.

II.

The court further finds, 1, that the Lake Erie, Wabash
253 and St. Louis Railroad Company was a corporation duly organized and incorporated under and by virtue of the laws of the State of Indiana, on or about the 24th day of June, 1852, for the construction, owning, and maintaining of a line of railroad, the eastern terminus thereof being a point on the east line of Allen and De Kalb county, in said State of Indiana; thence running down the valleys of Little and Wabash rivers and passing through the counties of De Kalb, Allen, Whitley, Huntington, Wabash, Miami, Cass, Carroll, Tippecanoe, Fountain, Warren, and Vermillion, or as many of them as may be necessary, all in the State of Indiana, on the most eligible route and terminating at some point on the west line of the State of Indiana in the general direction of Danville, Illinois; 2, that thereafter the said Lake Erie, Wabash and St. Louis Railroad Company duly made and executed its twenty-five hundred bonds for one thousand dollars each, bearing date the first day of August, 1853, payable on the first day of August, 1865, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of February and August in each year, on presentation and surrender of the coupons thereto attached as they should respectfully become due; 3, that thereafter the said Lake Erie, Wabash and St. Louis Railroad Company, in order to secure the payment of the principal of the said bonds and of the interest thereon as the same should from time to time become due, duly made, executed, and delivered to the said Farmers' Loan and Trust Company, as trustee, a mortgage or deed of trust bearing date on said first day of August, 1853, and thereby conveyed to said trustee, upon the trusts therein specified, its road made and to be made, including the right of way and the land occupied thereby, together with the superstructure and the tracks thereon, and all rails and other materials and machinery used thereon or procured there-
254 for, including the furniture and equipments of the road and those to be purchased and paid for with the above-described bonds, and the bridges, viaducts, culverts, fences, depot grounds, and buildings erected or to be erected thereon, and all franchises, rights, and privileges of the said railroad company of, in, to, or concerning the same; 3, that the said mortgage was thereafter duly recorded in all the counties through which the said railroad ran or in which it was situated, and became and is a first and prior lien on all the

railroad property, equipment, and franchises therein mentioned and described, and that all of the said bonds thereby secured are now outstanding in the hands of divers persons and corporations, owners and holders thereof for value; 4, that the time for the payment of the principal of the said bonds was thereafter, at maturity thereof, extended to the first day of August, 1890, at the same rate of interest; 5, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation as hereinafter stated of the said Lake Erie, Wabash and St. Louis Railroad Company, failed to pay the interest maturing on said bonds on the first day of February, 1885, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of the maturity thereof; that the coupons due February 1, 1885, and August 1, 1885, and February 1, 1886, and August 1, 1886, have since been paid by the receivers appointed as hereinafter set forth, leaving due and unpaid all subsequent coupons; 6, that there is now owing and unpaid for principal and interest upon said bonds and interest upon the unpaid installments of interest from the dates at which they respectfully became due to the first day of February, 1889, the sum of two million nine hundred and sixty-three thousand seven hundred and
255 fifty dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded debt bonds; 7, that the holders of more than one-half of the bonds outstanding and secured by said mortgage by notice in writing have required the said trustee to proceed to enforce the security provided by said mortgage and to foreclose the same and to collect the principal and interest due upon said bonds.

III.

The court doth further find and adjudge, 1, that thereafter and on or about the twenty-fifth day of June, 1856, the said Toledo and Illinois Railroad Company consolidated under the laws of the said States of Ohio and Indiana with the said Lake Erie, Wabash and St. Louis Railroad Company, the consolidated corporation being known as the Toledo, Wabash and Western Railroad Company; 2, that thereafter, under decrees of the circuit court of the United States for the northern district of Ohio and of the circuit court of the United States for the district of Indiana, the property of the said consolidated corporation was sold under foreclosure of certain junior mortgages to Azariah Boody; that the said purchaser thereafter conveyed the said property, that portion thereof situate within the State of Ohio and formerly owned by the Toledo and Illinois Railroad Company to the Toledo and Wabash Railroad Company, a corporation organized as hereinafter stated, and that portion thereof situate within the State of Indiana, and formerly owned by the Lake Erie, Wabash and St. Louis Railroad Company, to the Wabash

and Western Railway Company, a corporation also organized as hereinafter stated.

256 IV.

The court doth further find: 1. That the Toledo and Wabash Railroad Company was a corporation organized under and by virtue of the laws of the State of Ohio on or about the first day of July, 1858, and that to said corporation was conveyed the railway property, equipments, and franchises formerly of the Toledo and Illinois Railroad Company, situate in said State; 2, that thereafter and on or about the fifteenth day of October, 1858, the said Toledo and Wabash Railway Company duly made and executed its bonds to the amount of one million dollars of the denomination of two hundred and fifty, five hundred, and one thousand dollars each, bearing date on that day, payable on the first day of November, 1878, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of May and November in each year, on presentation and surrender of the coupons thereto attached as they should respect*fu*lly become due; 3, that to secure the payment of the said bonds and of the interest thereon as the same should from time to time mature and be due and payable the said Toledo and Wabash Railroad Company duly made, executed, and delivered to Edwin D. Morgan, as trustee, a mortgage or deed of trust bearing date on said fifteenth day of October, 1858, and thereby conveyed to the said trustee, upon the trusts therein stated, its railroad made and to be made, the right of way and all lands occupied thereby, together with superstructures, depots, depot grounds, and all buildings erected or to be erected thereon, and the rails, tracks, side tracks, bridges, fences, viaducts, culverts, rights, privileges, franchises, and accessories of the said railroad company in the State of Ohio, and all the rolling-stock, material, machinery, furniture, and equipments of said road, being the same property described in the deed
257 of Matthew Johnson, marshal and special master commissioner, to A. Boody, dated October 8th, one thousand eight hundred and fifty-eight, and which was conveyed by said Boody to said railroad company; 4, that the said mortgage was thereafter duly recorded in all the counties through which the said railroad ran or in which it was situated, and became and is a lien on all the railroad property, equipment, and franchises therein described, subject only to the prior lien of the said mortgage executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company, as hereinbefore mentioned, and that all of the bonds thereby secured were issued and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that the time for the payment of the principal of said bonds was thereafter, at maturity, extended to the first day of May, 1893, at the same rate of interest; 6, that the said Edwin D. Morgan, trustee, under said mortgage or deed of trust, departed this life on or about the fourteenth day of February, 1883, and the defendant James F. Joy has been duly appointed his successor in the trusts

thereby created; 7, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation as hereinafter stated of said Toledo and Wabash Railroad Company, failed to pay the interest maturing on said bonds on the first day of May, 1885, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of the maturity thereof; 8, that there is now owing and unpaid for principal and interest upon said bonds and interest upon said several installments of interest from the dates at which they respect*fully* became due to the first day of February, 1889, the sum of one million three hundred and thirty-two thousand one hundred dollars, together with interest on
258 said sum from the said first day of February, 1889, to *to* the date of this decree, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds.

V.

And the court doth further find: 1, that the Wabash and Western Railway Company was a corporation duly organized and incorporated under and by virtue of the laws of the State of Indiana on or about the fifteenth day of July, 1858, and that to said corporation was conveyed the railway property, equipments, and franchises formerly of the Lake Erie, Wabash and St. Louis Railroad Company in said State; 2, that thereafter and on or about the fifteenth day of October, 1858, the said Wabash and Western Railway Company duly made and executed its bonds to the amount of one million five hundred thousand dollars, of the denomination of one hundred, five hundred, and one thousand dollars each, bearing date on said day, payable on the first day of November, 1878, with interest at the rate of seven per centum, payable semi-annually on the first days of May and November in each year on presentation and surrender of the coupons thereto attached as they should respect*fully* become due; 3, that to secure the payment of the said bonds and of the interest thereon, as the same should from time to time accrue and become due, the said Wabash and Western Railway Company duly made, executed, and delivered to Edwin D. Morgan, as trustee, a mortgage or deed of trust, bearing even date with said bonds, and thereby conveyed to said trustee, upon the trusts therein stated, its railroad made and to be made, the right of way and all the land occupied thereby, together with all the superstructure, depots, depot grounds, and buildings erected or to be erected thereon, and the rail, tracks, side tracks,
259 bridges, fences, viaducts, culverts, rights, privileges, and franchises of the said railroad company in the State of Indiana, and all the rolling stock, materials, machinery, furniture, and equipments of the said road, being the same property described in the deed of John L. Robinson, marshal and commissioner, to A. Boody, dated October fifth, eighteen hundred and fifty-eight, and conveyed

by A. Boody to the said railway company; 4, that the said mortgage was thereafter duly recorded in all the counties through which the said railroad ran or in which it was situated, and became and is a lien on all the railroad property, equipments, and franchises therein described, subject only to the prior lien of the said mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company as hereinbefore recited, and that all of the bonds thereby secured were issued and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that the time for the payment of the principal of the said bonds was thereafter at maturity extended to the first day of May, 1893, at the same rate of interest; 6, that the said Edwin D. Morgan, trustee under the said mortgage or deed of trust, departed this life, as hereinbefore found, on or about the fourteenth day of February, 1883, and that since his death the defendant James F. Joy has been appointed his successor in the trusts thereby created; 7, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation, as hereinafter stated, to said Wabash and Western Railway Company, failed to pay the interest maturing on said bonds on the first day of May, 1885, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of the maturity thereof; 8, that there is now owing and unpaid for
260 principal and interest upon said bonds and interest upon the several installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of one million nine hundred and ninety-six thousand six hundred and fifty dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of, and in addition to, the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds.

VI.

And the court doth further find: 1. That thereafter and on or about the third day of November, 1858, the said Toledo and Wabash Railroad Company duly consolidated under the laws of the said States of Ohio and Indiana with the said Wabash and Western Railway Company, the consolidated company being known as the Toledo and Wabash Railway Company.

VII.

And the court doth further find: 1. That the Illinois and Southern Iowa Railroad Company was a corporation duly incorporated by act of the legislature of the State of Illinois on or about the twelfth day of February, 1857, with power and authority to survey, locate, relocate, establish, build, maintain, equip, and operate a railroad from the city of Warsaw and from the easterly shore of the

main channel of the Mississippi river opposite the city of Keokuk, at Hamilton, in the county of Hancock, Illinois, by way of Carthage, in said county, to such point on the line of the Toledo and Quincy railroad at or between Camp point and a point at or near Clayton as might be found most expedient and practicable for a connection with the line of said Toledo and Quincy railroad; 2,
261 that the said Illinois and Southern Iowa Railroad Company thereafter and on or about the first day of March, 1862, duly made and executed its bonds to the amount of three hundred thousand dollars, two hundred of said bonds being of the denomination of one thousand dollars each and two hundred thereof being of the denomination of five hundred dollars each, payable on the first day of August, 1882, with interest thereon from and after the first day of March, 1862, at the rate of seven per cent. per annum, payable semi-annually on the first days of February and August in each year on presentation and surrender of the coupons thereto attached as they should respectively become due; 3, that to secure the payment of the principal of said bonds, together with interest thereon as the same should accrue and become due and payable, the said Illinois and Southern Iowa Railroad Company duly made, executed, and delivered to John N. A. Griswold, James R. Jesup, and Lucien Tilton, as trustees, a mortgage or deed of trust bearing even date with said bonds, and thereby conveyed to said trustees upon the trusts therein stated all the lands, tenements, roadbed, right of way, depot and station grounds, and houses, turnouts, switches, and easements, ties, bridges, iron engines, tenders, cars, tools, machinery, and materials, wood, fuel, furniture, and property of every kind, name, and nature whatsoever which the said railroad company then owned or might thereafter acquire or own or have any interest in, for, on, or connected with its road, built or to be built, being and situate between the town of Carthage, in Hancock county, and the junction with the Quincy and Toledo railroad at or near Clayton, in Adams county, Illinois, the same being a distance of about thirty miles; also all contracts, leases, and rights which said railroad company then had or might thereafter acquire with or against any other railroad or other corporation, and especially the lease then owned by said railroad company from the Mississippi
262 and Wabash Railway Company granting the joint use of all its road from Carthage to the Mississippi river, opposite Keokuk, Iowa, and to said town of Warsaw for the term of fifty years, from May twenty-fifth, eighteen hundred and fifty-nine; which said lease is duly executed and of record in said county of Hancock and State of Illinois, and also any lease or contract then made, or which might at any time thereafter be made, by said railroad company with other parties respecting the ferry across the Mississippi river at Keokuk and the right to use the same; also all unpaid subscriptions to the capital stock, debts, books, vouchers, evidences of debt, tickets, hand-bills, and all other papers which might then or thereafter be due or belong to said railroad company, together with all the rights, privileges, immunities, and franchises and all its receipts, earnings, and assets from every source and of every nature

whatever; 4, that the said mortgage was thereafter duly recorded in all the counties in said State of Illinois through which the said railroad ran or in which it was situated and became, and is a first and prior lien on all the said railway property, equipments, and franchises therein mentioned & described, and that all the said bonds were issued and are now standing in the hands of divers persons and corporations, holders thereof, for value.

5. That the time for the payment of the principal of the said bonds was thereafter, at maturity, extended to the first day of August, 1912, the rate of interest being reduced to six per centum per annum; 6, that the said Lucien Tilton, one of said trustees, thereafter died; 7, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation, as hereinafter stated, to the said Illinois and Southern Iowa Railroad Company, failed to pay the interest maturing on said bonds on the first day of August, 1884, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has
263 been duly demanded at the respective dates of the maturity thereof; that the coupons due August 1, 1884, and February 1st, 1885, and August 1, 1885, and February 1, 1886, and August 1, 1886, have since been paid by the receivers appointed, as hereinafter stated, leaving unpaid all subsequent coupons; 8, that there is now owing and unpaid for principal and interest upon the said bonds and interest upon the several installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of three hundred and forty-seven thousand seven hundred dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded debt bonds; 9, that the holders of more than one-half of the bonds outstanding and secured by said mortgage, by notice in writing, have required the said trustees to proceed to enforce the security provided by said mortgage for the principal and interest due upon said bonds.

## VIII.

And the court doth further find: 1, that the Great Western Railroad Company of 1859 was a corporation duly incorporated by an act of the legislature of the State of Illinois on or about the twenty-ninth day of January, 1859, with rights, powers, and franchises usually possessed by railroad corporations and all the privileges, powers, rights, and franchises at any time theretofore possessed by the Great Western Railroad Company; 2, that thereafter and on or about the twenty-fifth day of May, 1863, the said Great Western Railroad Company of 1859 made and executed its twenty-five hundred bonds, bearing date on that day, for one thousand dollars each, payable on the first day of August, 1888, with interest at the rate of
264 seven per centum per annum, payable semi-annually on the first days of February and August in each year on presenta-

tion and surrender of the coupons thereto attached as they should severally become due; 3, that to secure the payment of the principal of the said bonds, together with the interest thereon, as the same should accrue and become due and payable the said Great Western Railroad Company of 1859 duly made, executed, and delivered to George Griswold, Alexander M. White, and Henry H. Warden, as trustees, a mortgage or deed of trust bearing even date with the said bonds, and thereby conveyed to the said trustees upon the trusts therein specified all the right of way and railroad of the said railroad company extending in the State of Illinois from Naples and Meredosia as its western termini through Springfield and Decatur to the boundary lines between the States of Illinois and Indiana, as then used or as at any time thereafter the said road might be used, together with all embankments, bridges, turn-outs, side tracks, structures, water tanks and fixtures, shops, engine or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real and personal, then used or that thereafter might be used by the said railroad company in connection with the said railroad, and everything appurtenant thereto, and all the franchises, privileges, and chartered or other rights of the said Great Western Railroad Company of 1859; 4, that the said mortgage was thereafter recorded in the various counties of the said State of Illinois through which the said railroad ran or in which it was situated, and became and is a first and prior lien, except as hereinafter stated, upon all the railway property, equipments, and appurt-ances therein mentioned and described, and that all of the bonds thereby secured were issued and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that
265 the said bonds were executed and delivered to take up and pay and satisfy certain prior liens thereto existing upon the property of said company, viz., two certain issues of bonds of the Great Western Railroad Company, the predecessor corporation of the said Great Western Railroad Company of 1859, amounting to one million dollars and one million three hundred and fifty thousand dollars respectively; that all of the said bonds last mentioned were so taken up and satisfied except four for the sum of one thousand dollars each, with interest at ten per centum per annum, payable semi-annually, which are still outstanding; that of said four bonds one has been produced and proved before the masters in this cause; that the same is secured by a mortgage to the Farmers' Loan and Trust Company as trustee, bearing date the fifteenth day of March, 1853, and which said mortgage to the extent of the principal and interest of the bonds secured thereby outstanding as aforesaid and not exceeding the sum of four thousand dollars and interest is a lien on the railway property, equipments, and franchises of the said Great Western Railroad Company of 1859, prior to the lien thereon of the said mortgage to the said Griswold, White, and Warden; 6, that the said George Griswold, one of the said trustees, thereafter departed this life; 7, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation, as hereinafter stated, of

said The Great Western Railroad Company of 1859, failed to pay the interest maturing on said bonds on the first day of August, 1884, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of maturity thereof; that the coupons due August 1, 1884, and February 1, 1885, and August 1, 1885, and February 1, 1886, and August 1, 1886, have since been paid by the receivers appointed as hereinafter set forth, leaving
266 unpaid all subsequent coupons; 8, that there is now due, owing, and unpaid upon the said bond produced before the masters, executed by the Great Western Railroad Company to the Farmers' Loan and Trust Company, as trustee, for principal and interest, the sum of two thousand nine hundred and seventy-five dollars and sixty-two cents, together with interest thereon from the first day of February, 1889, to the date of this decree; 9, that there is now due and owing and unpaid for principal and interest upon said bonds of the Great Western Railroad Company of 1859 and interest upon the several installments of interest from the dates at which they respect*fully* became due to the first day of February, 1889, the sum of two million nine hundred and sixty-three thousand seven hundred and fifty dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sums are so due, independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds; 10, that the holders of more than one-half of the bonds outstanding and secured by said mortgage, by notice in writing, have required the said trustees to proceed to enforce the security provided by said mortgage and to foreclose the same and to collect the principal and interest due upon said bonds.

IX.

And the court doth further find, 1, that thereafter and on or about the eleventh day of May, 1865, the said Great Western Railroad Company of 1859 duly made and executed its twenty-five hundred other bonds, each for the sum of one thousand dollars, bearing date of said day, payable on the first day of May, one thousand eight hundred and ninety-three, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of
267 May and November in each year on presentation and surrender of the coupons thereto attached as they should severally become due; 2, that to secure the payment of the principal of the said bonds, together with the interest thereon, as the same should mature and become due, the said Great Western Railroad Company of 1859 duly made, executed, and delivered to Solon Humphreys and James R. Jesup, as trustees, a mortgage or deed of trust bearing date the said eleventh day of May, 1865, and thereby conveyed to the said trustees upon the trusts therein stated all the right of way and railroad of the said railroad company extending in the State of Illinois from Naples and Meredosia, as its western termini, through

Springfield and Decatur to the boundary line between the States of Illinois and Indiana, as then used or as at any time thereafter the said road might be used, together with all embankments, bridges, turnouts, side tracks, structures, water tanks and fixtures, shops, engines or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real and personal, then owned or used or that thereafter might be owned or used by the said railroad company in connection with the said railroad and everything appurtenant thereto, and all the franchises, powers, privileges, and chartered or other rights of the said Great Western Railroad Company of 1859; 3, that the said mortgage was thereafter duly recorded in the various counties in the said State of Illinois through which the said railroad ran or in which it was situated, and became and is a lien upon the railway property, equipments, and franchises therein mentioned and described, subject only to the prior lien of said mortgage executed by the Great Western Railway Company to the extent of the principal and interest of the four bonds secured thereby outstanding as hereinbefore set forth and to the prior lien of the said mortgage executed by the said The Great
268 Western Railroad Company of 1859 to the said Griswold, White, and Warden as trustees; 4, that the said Solon Humphreys thereafter duly resigned and discharged himself of the trusts created by the said mortgage; 5, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation as hereinafter stated of the said The Great Western Railway Company of 1859, failed to pay the interest maturing on the said bonds on the first day of May, 1885, and that default has been made in the payment of the coupons on said bonds maturing since said date, although said payment thereof has been duly demanded at the respective dates of the maturity thereof; 6, that there is now owing and unpaid for principal and interest upon said bonds and interest upon the several unpaid installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of three million three hundred and twenty-seven thousand seven hundred and fifty dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded debt bonds; 7, that the holders of more than a majority in value of the bonds outstanding and secured by said mortgage, by notice in writing, have declared the principal of said bonds to be due and payable, and have required the said trustee to proceed in accordance with the terms of said mortgage to foreclose the same.

X.

And the court doth further find, 1, that the Quincy and Toledo Railroad Company was a corporation duly incorporated under

and by virtue of an act of the legislature of the State of Illinois on or about the thirty-first day of January, 1857, and
269 authorized and empowered to locate, construct, and finally complete and put in operation a railroad from the east end of the depot ground of the Northern Cross Railroad Company, at Camp Point, in the county of Adams, to the east side of the Illinois river at or near Naples or Meredosia, and so as to connect the same with the track of the Great Western railroad of Illinois; 2, that thereafter and on or about the twenty-ninth day of May, 1865, the said Quincy and Toledo Railroad Company made and executed its five hundred bonds, each for the sum of one thousand dollars, bearing the date on that day, payable on the first day of November, 1890, with interest thereon at the rate of seven per centum per annum, payable semi-annually on the first days of May and November of each year, on presentation and surrender of the coupons thereto attached as they should severally become due; 3, that to secure the payment of the principal of said bonds and of the interest thereon as the same should mature and become due and payable the said Quincy and Toledo railroad made, executed, and delivered to John T. Terry, as trustee, a mortgage or deed of trust bearing date on said twenty-ninth day of May, 1865, and thereby conveyed to said trustee therein specified all the right of way and railroad of the said railroad company, extending in the State of Illinois from Clayton to the west side of the Illinois river, opposite Meredosia, as then used or as *it* at any time thereafter the said road might be used, together with all embankments, bridges, turn-outs, side tracks, structures, water tanks and fixtures, engine or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real and personal, now owned or used or that thereafter might be owned or used by the said railroad company in connection with the said railroad and everything appurtenant thereto, ex-
270 cepting that part of the road west of said Clayton and all the franchises, powers, privileges, and chartered or other rights of the said Quincy and Toledo Railroad Company; 4, that the said mortgage or deed of trust was thereafter duly recorded in the various counties through which the said railroad ran or in which it was situate, and became and is a first and prior lien upon all the railway property, equipments, and franchises therein mentioned and described, and that all of said bonds thereby secured were issued and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation, as hereinafter set forth, to said Quincy and Toledo Railroad Company, failed to pay the interest maturing on said bonds on the first day of November, 1884, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of the maturity thereof; that the coupons due November 1, 1884, and May 1, 1885, and November 1, 1885, and May 1, 1886, and November 1, 1886, have since been paid by the receivers appointed as hereinafter set forth, leaving unpaid all subsequent coupons; 6, that there is

now owing and unpaid for principal and interest upon said bonds and interest upon the several unpaid installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of five hundred and eighty-two thousand nine hundred and fifty dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree, and that such sum is independent of and in addition — the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds.

271 7, that the holders of more than one-half of the said bonds outstanding and secured by said mortgage by notice in writing have required the said trustee to proceed to enforce the security provided by said mortgage and to foreclose the same and collect the principal and interest due upon said bonds.

XI.

And the court doth further find, 1, that thereafter and on or about the said twenty-ninth day of May, 1865, under and by virtue of the laws and consolidation statutes of the several States of Ohio, Indiana, and Illinois, the said Toledo and Wabash Railway Company, the said The Great Western Railway Company of 1859, the said Quincy and Toledo Railroad Company, and the said Illinois and Southern Iowa Railroad Company consolidated together as one corporation under the name of the Toledo, Wabash and Western Railway Company.

XII.

And the court doth further find, 1, that thereafter, and on or about the first day of February, 1867, the said Toledo, Wabash and Western Railway Company made and executed under its corporate seal and attested by the signature of its president and secretary fourteen thousand two hundred of its bonds bearing date on that day, fourteen thousand thereof numbered from one to fourteen thousand, inclusive, being for one thousand dollars each, and two hundred thereof numbered from fourteen thousand and one to fourteen thousand two hundred, both inclusive, being for five thousand dollars each, payable on the first day of February, 1907, with interest thereon at the rate of seven per centum per annum, payable quarterly on the first days of May, August, November, and February of each year on presentation and surrender of the coupons thereto attached, as they should severally become due; 2, that to secure the payment of the

272 principal of the said bonds and of the interest thereon as the same should accrue and become due, the said Toledo, Wabash and Western Railway Company duly made, executed, and delivered to the complainants James R. Jesup and to Isaac H. Knox, as trustees, a mortgage or deed of trust bearing date on that day and known as the consolidated mortgage of the said company, and thereby conveyed to the said trustees, upon the trusts therein stated,

all the right of way and railroad of the said railroad company extending from Toledo, in the State of Ohio, to and through the State of Indiana and thence in the State of Illinois to Meredosia, with branch of said road to Naples and from said Meredosia to Camp Point, in said State of Illinois, and also with branch of said road from Clayton, in said State, to the east bank of the Mississippi river at Hamilton, in said State, as then made or as thereafter might be made, and as then used or thereafter might be used, together with all embankments, bridges, turnouts, side tracks, structures, water-tanks and fixtures, shops, engines or other houses, depots, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all other things, real and personal, then owned or used or that might thereafter be owned or used by the said railroad company in connection with the said railroad, and everything appertaining and appurtenant thereto, and all the franchises, powers, privileges, and chartered or other rights of the said railroad company, together with all the property, real and personal, of said railroad company then acquired or to be thereafter acquired at Quincy, in said State of Illinois, as also a certain contract made between the said railroad company and the Chicago, Burlington and Quincy Railroad Company, dated October 26, 1866, with all the rights and privileges secured by the said contracts to said railroad company, and all other
273 contracts; 3, that the said consolidated mortgage was thereafter duly recorded in all the counties through which the said railroad ran or in which it was situated and became and is a lien on all railway property, equipments, and franchises therein mentioned and described, being a first and prior lien upon that portion of said railroad extending from Clayton to Camp Point, and upon that portion of said railroad extending from Carthage to Evanston, and being a second lien upon that portion of said railroad extending from the west bank of the Illinois river, opposite Meredosia, to Clayton, in the State of Illinois, subject to the prior lien of the mortgage executed by the Quincy and Toledo Railroad Company to John T. Terry, as trustee, and upon that portion of the said railroad running from Clayton to Carthage, in the said State of Illinois, subject to the prior lien of the mortgage executed by the Illinois and Southern Iowa Railroad Company to Lucien Tilton, John N. A. Griswold, and James R. Jesup, as trustees, and being a third lien upon the remaining portions of the said railroad, subject to the prior lien of the mortgage executed by the Great Western Railroad Company of 1859 to George Griswold, Alexander M. White, and Henry H. Warden, as trustees, and of the mortgage executed by said last-named company to Solon Humphreys and James R. Jesup, as trustees, and of the mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustee, and of the mortgage executed by the Wabash and Western Railway Company to Edwin D. Morgan, as trustee, and of the mortgage executed by the Toledo and Illinois Railroad Company to the said Farmers' Loan and Trust Company, as trustee, and of the mortgage executed by the Toledo and Wabash

Railroad Company to the said Edwin D. Morgan, as trustee; 4, that the said consolidated mortgage, among other things, contained provisions for a sinking fund for the pay-
274 ment and extinguishment of all the bonds secured by said mortgage by the payment to commissioners of fifty thousand dollars per year, in installments of twenty-five thousand dollars every six months, until and including the maturity of said bonds; that the said mortgage and said bonds also contain covenants that in case of default in any of the quarter-yearly installments of interest on any of said bonds or in the said semi-annual payments to the sinking fund and the continuance of such defaults or either of them for the period of six months the principal of all the said bonds secured by said consolidated mortgage should forthwith become immediately due at the option of the holder or holders of a majority in interest of the said bonds then outstanding, to be expressed by them in writing to the trustees of said mortgage; 5, that the said bonds secured by said consolidated mortgage was thereafter duly issued and delivered to the amount of two millions seven hundred thousand dollars; that of said amount ninety thousand dollars have been retired by means of the said sinking fund, and that there are now outstanding said bonds secured by said consolidated mortgage to the amount of two millions six hundred and ten thousand dollars in the hands of divers persons and corporations, holders thereof for value; 6, that the said Isaac H. Knox, one of the said trustees, departed this life on or about the twenty-first day of December, 1888, and the complainant Edward H. Dixon has been duly elected in accordance with the terms of said consolidated mortgage to fill the vacancy thereby created; 7, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation, as hereinafter set forth, of said The Toledo, Wabash and Western Railway Company, failed to pay the interest maturing on said bonds on the first day of August, 1884, and that default has been made in the payment of the coupons on said bonds maturing since said date,
275 although payment thereof has been duly demanded at the respective dates of the maturity thereof; that the coupons due August 1, 1884, and November 1, 1884, were paid by the receivers appointed as hereinafter set forth, leaving unpaid all subsequent coupons; 8, that after the default in payment of the interest on the bonds secured by the said consolidated mortgage had continued for more than the space of six months, the holders of more than a majority of the bonds outstanding and secured by said mortgage, by notice in writing, notified the trustees of said consolidated mortgage that, as such holders, they elected to consider the principal of said bonds due and payable in consequence of such default and required the said trustees to proceed with the foreclosure of said consolidated mortgage; 9, that there is now due, owing, and unpaid for principal and interest upon the said bonds and interest upon the several unpaid installments of interest to the first day of February, 1889, the sum of three millions four hundred and seventy-nine thousand six hundred and fifty-two dollars, together with interest on said sum from said first day of February, 1889, to the date of this decree,

and that such sum is so due independent of and in addition to the amount hereinafter declared to be due by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds.

XIII.

And the court doth further find, 1, that the Decatur and East St. Louis Railroad Company was a corporation duly incorporated under an act of the legislature of the State of Illinois on or about the twenty-sixth day of February, 1867, with full power and authority to locate, construct, finish, and maintain a railroad with one or more tracks, commencing at some suitable point at or near the town of Decatur, in Macon county, in Illinois, and running from
276 thence to East St. Louis through the towns of Taylorville, in Christian county; Litchfield, in Montgomery county; Stanton, in Macoupin county, and Edwardsville, in Madison county, upon the most eligible route and with the usual powers of railway corporations; 2, that the said Decatur and East St. Louis Railroad Company thereafter duly made and executed its twenty-seven hundred bonds for one thousand dollars each, bearing date the first day of August, 1869, payable on the first day of August, 1889, with interest at the rate of seven per centum per annum, payable semi-annually, on the first day of February and August of each year on presentation and surrender of the coupons thereto attached as they should severally become due; 3, that in order to secure the payment of the said bonds and the interest thereon as the same should accrue and become due and payable, the said Decatur and East St. Louis Railroad Company duly made, executed, and delivered to Isaac H. Knox, as trustee, a mortgage or deed of trust bearing date the third day of June, 1869, and thereby conveyed to the said trustee upon the trusts therein stated the said Decatur and East St. Louis Railroad Company's railroad, track, land, depot grounds, depots, buildings, structures, equipments, rolling stock, and property of every description owned, constructed, and used or in future to be owned, constructed, and used on the line of their said road from Decatur to East St. Louis, both inclusive, together with the road bed, tracks, side tracks, branches, lands, gravel pits, stations, shops, cars, engines, tools, and machinery of every description and including all rights, credits, franchises, and property, real and personal and and mixed, acquired or to be acquired by said railroad company; 4, that the said mortgage was thereafter duly recorded in all the counties in said State of Illinois through which the said railroad ran or in which it was situated and became and is a first and prior lien upon all
277 the railway, property, equipments, and franchises therein mentioned and described, and that all of the said bonds secured thereby were duly issued and delivered and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that the said Isaac H. Knox, the trustee named in said mortgage, having departed this life on or about the twenty-first day of December, 1888, as hereinbefore found, the defendant, The Central Trust Company of New York, has been duly substituted as

trustee in his place and stead; 6, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation to said Decatur and East St. Louis Railroad Company, as hereinafter stated, failed to pay the interest maturing on said bonds on the first day of August, 1884, and that default has been made in the payment of the coupons on the said bonds maturing since said date, although payment thereof has been duly demanded at the respective date of maturity thereof; that the coupons maturing August 1, 1884, and February 1, 1885, and August 1, 1885, and February 1, 1886, and August 1, 1886, have since been paid by the receivers appointed as hereinafter stated, leaving unpaid all subsequent coupons; 7, that there is now owing and unpaid for principal and interest upon the said bonds and interest upon the several unpaid installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of three millions two hundred thousand eight hundred and fifty dollars, together with interest on said sum from the said first day of May, 1889, and that such sum is independent of and in addition to the amount hereinafter declared to be owing and unpaid by reason of the issue of and apportionment to said mortgage or trust deed of scrip certificates and funded-debt bonds; 8, that the holders of more than one-half of the said bonds outstanding and secured by
278 said mortgage, by notice in writing, have required the trustee to seek to obtain possession of the railroad and property covered thereby and to foreclose said mortgage and sell the said mortgaged premises for the benefit of the holders of said bonds.

XIV.

And the court doth further find, 1, that on or about the third day of June, 1869, the said The Toledo, Wabash and Western Railway Company and the said Decatur and East St. Louis Railroad Company, consolidated together under the laws of the State of Illinois under the name of the Toledo, Wabash and Western Railway Company; 2, that thereafter by virtue of a decree of foreclosure and sales made in an action pending in the court of common please of Lucas county, Ohio, on the 21st day of December, 1875, and by virtue of decrees of foreclosure and sale made in actions pending in the circuit court of Cass county, Indiana, and in the circuit court of Vermillion county, Illinois, at the February term, 1886, the said courts respectively, for the foreclosure of a certain mortgage theretofore executed by the said The Toledo, Wabash and Western Railroad Company and known as the "gold-bond" mortgage, all and singular the railway of said The Toledo, Wabash and Western Railway Company lying in the States of Ohio, Indiana, and Illinois was sold and conveyed to John W. Ellis, Alexander M. White, John T. Martin, George I. Seney, and Henry A.V. Post; 3, that thereafter said purchasers caused to be organized under the laws of the State of Ohio, a corporation called the Wabash Railway of Ohio, and also caused to be organized under the laws of the State of Indiana a corporation called the Wabash Railway Company of Indiana, and

also caused to be organized under the laws of the State of Illinois, a corporation called the Wabash Railway Company of Illinois; that thereafter the said three corporations consolidated under the
279 laws of the said several States of Ohio, Indiana, and Illinois under the name of the Wabash Railway Company, and that thereafter the said John W. Ellis, Alexander M. White, John T. Martin, George I. Seney, and Henry A. V. Post, by deed bearing date the twelfth day of January, 1877, duly conveyed to the said Wabash Railway Company all their rights, title, and interest of, in, and to all — singular the continuous railway extending from its eastern terminus at Toledo, in the State of Ohio, through the States of Indiana and Illinois to East St. Louis, and also to East Hannibal, Quincy, and Hamilton, on the Mississippi river, in the State of Illinois, and therefore known as the Toledo, Wabash and Western railroad or railway.

XV.

And the court doth further find, 1, that thereafter the said Wabash Railway Company became the purchaser of a certain line of railroad theretofore known as the Hannibal and Naples railroad, extending from Naples, in Scott county, in the State of Illinois, to the Mississippi river at East Hannibal, in said State; 2, that thereafter the said Wabash Railway Company, in payment of the purchase price of the said railroad, duly made and executed its five hundred bonds, bearing date the sixteenth day of May, 1879, for one thousand dollars each, payable on the first day of June, 1909, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of December and June in each year, on presentation and surrender of the coupons thereto attached as they should respectively become due; 3, that in order to secure the payment of the principal of the said bonds and of the interest thereon, as the same should from time to time mature and become due and payable, the said Wabash Railway Company duly made, executed, and delivered to Alfred T. White as trustee a mortgage or deed of trust bearing date the said sixteenth day of May, 1879, and thereby
280 conveyed to the said trustee upon the trusts therein stated the Hannibal and Naples railroad from Naples, in Scott county, Illinois, to the Mississippi river at East Hannibal, as then laid out and constructed, with all sidings, appurtenances, and belongings, the same as conveyed by Alexander M. White to said Wabash Railway Company by deed dated — 1878; 4, that the said mortgage was thereafter duly recorded in the various counties in the said State of Illinois through which the said railroad ran or in which it was situated and became and is a first and prior lien upon the railroad property, equipments, and franchises therein mentioned and described; 5, that all the bonds secured by said mortgage were duly issued and are now outstanding in the hands of divers persons, owners and holders thereof for value; 6, that the Wabash, St. Louis and Pacific Railroad Company, the successor corporation as hereinafter stated to said Wabash Railway Company, failed to pay the interest on said bonds maturing on the first day of June,

1884, and that default has been made in the payment of the coupons on said bonds maturing since said date, although payment thereof has been duly demanded at the respective dates of maturity thereof; that the coupons due June 1, 1884, and December 1, 1884, and June 1, 1885, and December 1, 1885, and June 1, 1886, have since been paid by the receivers appointed as hereinafter set forth, leaving unpaid all subsequent coupons; 7, that there is now owing and unpaid for principal and interest upon the said bonds and interest upon the several installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of five hundred and ninety-nine thousand four hundred and fifty-eight dollars and thirty-three cents, together with interest on said sum from said first day of February, 1889, to the date of this decree; 8, that the holders of more than a majority
281 in value of the outstanding bonds secured by said mortgage, by notice in writing, have required the said trustee to foreclose said mortgage for non-payment of the interest coupons attached to said bonds.

XVI.

And the court doth further find, 1, that the said Wabash Railway Company thereafter duly made and executed its two thousand bonds for one thousand dollars each, bearing date the seventh day of May, 1879, payable on the first day of April, 1909, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each year on presentation and surrender of the coupons thereto attached as they should severally become due; 2, that in order to secure the payment of the principal of the said bonds, together with the interest thereon as the same should mature and become due and payable, the said Wabash Railway Company duly made, executed, and delivered to Solon Humphreys and Daniel A. Lindley as trustees a mortgage or deed of trust, bearing date on the said seventeenth day of May, 1879, and thereby conveyed to the said trustees upon the trusts therein specified all the railroad, road-bed, and right of way of the said railway company, extending from the city of Toledo, in the State of Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river at Hannibal, in said State, and with branch of said road leading from Decatur, in said State, to East St. Louis, in same State, together with all embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses,
282 depots, turn-tables, engine-, machinery, cars, tools, rolling stock, lots, lands, buildings, and offices and other things, real and personal, then owned or used or that might thereafter be owned or used by the said railroad company in connection with the said railroad and every appurtenant thereto, and all the powers, privileges, franchises, and chartered or other rights of the said Wabash Railway Company, together with all and singular the tenements, here-

ditaments, and appurtenances thereto belonging or in anywise appertaining and all reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and all contracts, leases, and rights then existing or that might thereafter be acquired by said railroad company with other corporations, companies, or individuals, and all the estate, right, title, interest, and demand, as well at law as in equity, of the said railway company in and to the same and every part thereof, with the said appurtenances; 3, that the said mortgage or deed of trust was thereafter duly recorded in various counties through which the said line of railroad ran or in which it was situated, and became and is a lien upon the railway, property, equipments, and franchises mentioned and described therein, but subsequent and subject to the respective liens of the various mortgages theretofore executed by the said railway company and its predecessor corporations and hereinbefore particularly set forth: 4, that all the bonds secured by the said mortgage or deed of trust were issued and are now outstanding in the hands of divers persons and corporations, holders thereof for value; 5, that the Wabash, St. Louis and Pacific Railway Company, the successor corporation to the said Wabash Railway Company, failed to pay the interest maturing on said bonds on the first day of October, 1884, and that default has been made in the payment of the coupons maturing on said bonds since said date, although payment thereof has been duly demanded at the
283 respective dates of the maturity thereof; that the coupons maturing October 1, 1884, has since been paid by the receivers appointed as hereinafter set forth, leaving unpaid all subsequent coupons; 6, that there is now due, owing, and unpaid for principal and interest on the said bonds and interest on the several unpaid installments of interest from the dates at which they respectively became due to the first day of February, 1889, the sum of two million six hundred and seventy-six thousand six hundred and sixty-six dollars and sixty-six cents, together with the interest on the said sum from the said first day of February, 1889, to the date of this decree.

XVI (*a*).

Reference is hereby made to the report of the masters filed herein for a detailed statement of the amounts outstanding and unpaid for interest and for principal on each of said mortgages respectively.

XVII.

And the court doth further find, 1, that the said mortgage executed by the Toledo & Illinois Railroad Company to the Farmers' Loan and Trust Company, as trustee, is the first and best lien upon all the line of railway, premises, and property therein mentioned and described; 2, that the said mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustee, is the first and best lien upon all the line of railway, premises, and property therein mentioned and described; 3, that the mortgage executed by

the Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee, is a lien upon all the line of railway, premises, and property therein mentioned and described, subject to the prior lien of the said mortgage executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust
284 Company; 4, that the mortgage executed by the Wabash and Western Railway Company is a lien upon the line of railway, premises, and property therein mentioned and described, subject to the prior lien of the said mortgage executed by the said Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company; 5, that the mortgage executed by the Illinois and Southern Iowa Railroad Company to Lucien Tilton, John N. A. Griswold, and James R. Jesup, as trustees, is a first and best lien upon all the line of railway, premises, and property therein mentioned and described; 6, that the mortgage executed by the Great Western Railroad Company of 1859 to George Griswold, Alexander M. White, and Henry H. Warden, as trustees, is the first and best lien upon the line of railway, premises, and property therein mentioned and described, subject only to the lien of a mortgage executed by the Great Western Railway Company to the Farmers' Loan and Trust Company, as trustee, to the extent of four thousand dollars and interest; 7, that the mortgage executed by the said Great Western Railroad Company of 1859 to Solon Humphreys and James R. Jesup, as trustees, is a lien upon the line of railway, premises, and property therein mentioned and described, subject to the prior lien of the mortgage executed by said company to said Griswold, White, and Warden, and to the lien of said mortgage executed by the Great Western Railroad Company to the Farmers' Loan and Trust Company to the extent of said four thousand dollars and interest; 8, that the mortgage executed by the Quincy and Toledo Railroad Company to John T. Terry, as trustee, is the first and best lien upon the line of railway, premises, and property therein mentioned and described; 9, that the mortgage executed by the Toledo, Wabash and Western Railway Company to James R. Jesup and Isaac H. Knox, as trustees, is the first and best lien upon that portion of the
285 said railways extending from Carthage to Elvaston and upon that portion of the said railways extending from Clayton to Camp Point, and is a second lien upon that portion of said railway extending from the west bank of the Illinois river opposite Meredosia to Clayton, in the State of Illinois, subject to the prior lien of the said mortgage executed by the Quincy and Toledo Railroad Company to John T. Terry, as trustee, and upon that portion of the said railway extending from Clayton to Carthage, in the State of Illinois, subject to the lien of the said mortgage executed by the Illinois and Southern Iowa Railroad Company to Lucien Tilton, John N. A. Griswold, and James R. Jesup, as trustees, and is a third lien upon that portion of the said railway extending from Naples and Meredosia to the boundary line between the States of Illinois and Indiana, subject to the prior liens thereon of the said mortgages executed by the Great Western Railway Company of 1859 to George Griswold, Alexander M. White, and Henry H. Warden, as trustees,

and to Solon Humphreys and James R. Jesup, as trustees, and to the lien of said mortgage executed by the Great Western Railroad Company to the Farmers' Loan and Trust Company to the extent of four thousand dollars and interest, and on that portion of said railway extending across the State of Indiana, subject to the prior lien of the mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustees, and of the mortgage executed by the Wabash and Western Railway Company to Edwin D. Morgan, as trustee, and upon that portion of said railway extending from the State line between Indiana and Ohio to Toledo, subject to the prior lien of the mortgage executed by the Toledo and Illinois Railroad Company *and* to the Farmers' Loan and Trust Company,
286 as trustee, and of the mortgage executed by the Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee; 10, that the mortgage executed by the Decatur and East St. Louis Company to Isaac H. Knox, as trustee, is the first and best lien upon the line of railway, premises, and property therein mentioned and described; 11, that the mortgage executed by the Wabash Railway Company to Alfred T. White, as trustee, is the first and best lien upon the line of railway, premises, and property therein mentioned and described; 12, that the mortgage executed by the Wabash Railway Company to Solon Humphreys and Daniel A. Lindley, as trustees, is a lien upon the lines of railway, premises, and property therein mentioned and described, subject to the prior lien of all the several mortgages hereinbefore in this finding set forth.

XVIII.

And the court doth further find that the parcels of real estate embraced in terminal properties and attached to the various divisions of the said railway are to be regarded as accessions to said divisions respectively, and are subject to the lien of the divisional and the respective general mortgages in the order of their respective priorities.

XIX.

And the court doth further find that prior to the consolidation in 1879 the several predecessor companies of the said Wabash Railway Company had owned and used upon their several lines of railway respectively certain amounts of rolling stock and equipments, which were subject to the lien of the various divisional mortgages hereinbefore set forth, and to the lien of the consolidated mortgage and the mortgage of 1879; that since said time the Wabash, St. Louis and Pacific Railway Company have purchased and acquired for serv-
287 ice thereon large additional amounts of equipments, and that the several receivers, Humphreys and Tutt and Cooley and McNulta, have also made additions thereto, and that such various additions have, in accordance with the terms of said divisional mortgages, become subject to the liens thereof, and also to the lien of the consolidated mortgage and mortgage of 1879; that the said rolling stock and equipment has been used indiscriminately upon

the entire system of railway without any apportionment thereof to any particular division of road and has been so used, commingled, and renewed that the lien of the said several mortgages cannot be declared therein except as a whole. The court, however, for the purposes of this decree and of the sale hereunder hereinafter provided for and not otherwise, hereby finds that the division from Toledo to the Indiana State line shall be entitled to seventy-five nine-hundredths thereof; the divisions from the State line of Ohio west to the State line of Illinois to one hundred and sixty-six nine-hundredths thereof; the division from the State line between Indiana and Illinois to Naples and Meredosia to one hundred and eighty nine-hundredths thereof; the division from Clayton to the west side of the Illinois river, opposite Meredosia, to thirty-four nine-hundredths thereof; the division from Clayton to Carthage to twenty nine-hundredths thereof; the division from Naples to the Mississippi river, opposite East Hamilton, to fifty nine-hundredths thereof; the division from Decatur to East St. Louis to one hundred and eight nine-hundredths thereof; the line from Clayton to Camp Point to six nine-hundredths thereof; the line from Carthage to Elvaston to six nine-hundredths thereof, and the line of road known as the Chicago division (which is not otherwise included in this decree) to two hundred and forty-six nine-hundredth- thereof.

288 XX.

And the court doth further find, 1, that thereafter and on or about the fourteenth day of August, 1879, the said Wabash Railway Company consolidated with the St. Louis, Kansas City and Northern Railway Company, a corporation of the State of Missouri and owning and operating a line of railway extending from St. Louis, Missouri, to Kansas City, in said State, with various branches, the consolidated corporation being known as the Wabash, St. Louis and Pacific Railway Company; 2, that thereafter and on or about the first day of June, 1880, the said The Wabash, St. Louis and Pacific Railway Company in order to secure a proposed issue of its bonds aggregating fifty millions of dollars, payable on the first day of June, 1920, with interest at six per cent. per annum, payable semi-annually, made and executed to the defendants The Central Trust Company of New York and James Cheney a mortgage or deed of trust bearing date on said day, and thereby conveyed to said trustees, upon the trusts therein stated and subject to the prior liens thereon, all and singular the lines of railway of said mortgagor, wherever situate, together with the equipments, appurtenances, and franchises thereunto belonging; 3, that thereafter the bonds secured by said mortgage or deed of trust were issued and delivered to the amount of about seventeen millions of dollars; 4, that thereafter and on or about the twenty-eighth day of May, 1884, the said Wabash, St. Louis and Pacific Railway Company filed in the circuit court of the United States for the eastern district of Missouri its bill in equity against the said Central Trust Company of New York, James Cheney, and others, and, alleging its insolvency, prayed for the appointment of receivers

of its property; 5, that by an order of said court, entered on said day, Solon Humphreys and Thomas E. Tutt were appointed receivers with power to take possession of all the lands, railroad,
289 and property, rights, and choses in action of said Wabash, St. Louis and Pacific Railway Company within the jurisdiction of the court; 6, that in an action of similar character instituted in this court by said Wabash, St. Louis and Pacific Railway Company against said defendants a similar order was made by this court, the said order of the said circuit court of the United States for the eastern district of Missouri being made the order of this court; 7, that the said Solon Humphreys and Thomas E. Tutt entered upon and took possession of the property of the said Wabash, St. Louis and Pacific Railway Company and used and operated the same; 8, that thereafter the Central Trust Company of New York and James Cheney instituted actions in the courts of the various States in which any part of the railway property of the said Wabash, St. Louis and Pacific Railway Company was situated against said company and others for a foreclosure of said general mortgage executed to them by said railway company; that each of said actions was removed from the State court in which the same was pending to the circuit court of the United States for the corresponding district, and that with the action so removed to the circuit court of the United States for the eastern district of Missouri was consolidated said action was instituted in said court by said Wabash, St. Louis and Pacific Railway Company; 9, that on or about the sixth day of January, 1886, a decree was entered in said consolidated action foreclosing the said general mortgage of the Wabash, St. Louis and Pacific Railway Company and ordering the railways and property in said decree described to be sold, subject to the liens of the mortgages executed prior to the said general mortgage by said Wabash, St. Louis and Pacific Railway Company or any of its predecessor corporations; 10, that thereafter and on or about the twenty-sixth day of April,
290 1886, under and in pursuance of said decree the property therein directed to be sold was so sold to the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, acting as a purchasing committee; that by decree of the circuit court of the United States for the eastern district of Missouri, entered on or about the fifteenth day of June, 1886, the said sale was ratified and confirmed, and that the master by whom the said property was sold has executed a deed of said railways and property to said purchasers, including the railways and property mentioned and described in the mortgages hereinbefore in this decree recited, subject in all things to the lien of said mortgages; 11, that by an order of the circuit court of the United States for the southern district of Illinois, bearing date and entered on or about the sixteenth day of December, 1886, Solon Humphreys and Thomas E. Tutt were removed as receivers of the said Wabash, St. Louis and Pacific Railway Company within the jurisdiction of said court, and Thomas M. Cooley was appointed receiver in their place and stead of said property, being appointed receiver of all the property described and set forth in the amended and supplemental complaint

in this action; 12, that thereafter and on or about the first day of April, 1887, the said Thomas M. Cooley resigned as such receiver, and by order of said court, bearing date and entered on said day, John McNulta was duly appointed successor to said Cooley as such receiver.

XXI.

And the court doth further find, 1, that at the time of the filing in this court of the original and amended and supplemental bills in this cause and of the various cross-bills herein the said mortgages, railways, property, and premises were in possession of this
291 court through its receiver appointed by its order.

XXII.

And the court doth further find, 1, that on or about January 24, 1877, the said Wabash Railway Company, in order to provide for the payment of interest theretofore accrued and then still due and unpaid and shortly thereafter to become due upon the several issues of bonds hereinafter stated, proposed to the holders of the coupons representing such interest to fund the same under an agreement by which the said holders should deposit the same in trust and receive in lieu thereof scrip certificates, exchang-able at the option of the holders for bonds of the said Wabash Company to be known as funded-debt bonds; 2, that the said proposition was thereafter accepted by holders of the said coupons, who thereafter deposited the same in trust with the defendant The Metropolitan National Bank, receiving in lieu thereof a scrip certificate reciting the deposit, the number and amount of the coupons, the number of the bonds to which they belonged, and entitling the holder thereof to interest thereon at the rate of seven per cent. per annum, payable yearly, and also entitling such holders to exchange such certificates at their option for bonds of the Wabash Railway Company to be known as funded-debt bonds; that thereafter certain of the holders of said scrip certificates exchanged the same for said funded-debt bonds, payable on the first day of February, 1907, with interest at the rate of seven per centum per annum, payable semi-annually; 3, that the said scrip certificates and the said funded-debt bonds provided that in case of default in payment of the interest thereon the holders thereof should be entitled to demand and receive possession of the original coupons deposited therefor, and that the agreement between the said Wabash Railway Company and the holders
292 of said coupons also provided that the deposit of said coupons and the acceptance of said funded-debt bonds should in no way impair the lien on the respective portions of the roads by which the respective bonds and coupons were secured; 4, that the said funded-debt bonds were apportioned by numbers to the several mortgage liens upon the several portions of the road primarily liable for the coupons in default in proportion to the aggregate amount of such defaulted coupons; 5, that thereafter an agreement was entered into between the said Wabash Railway Company and certain

holders of coupons belonging to bonds of the Toledo and Wabash Railway Company, the Wabash Western Railway Company and the Great Western Railroad of 1859, the Toledo, Wabash and Western Railway Company and the Decatur and East St. Louis Railroad Company, whereby said coupon holders received in exchange for such coupons when deposited a scrip certificate bearing interest graduated up to six per centum per annum and received for said scrip certificates, at their option, funded-debt bonds bearing interest at six per centum per annum; 6, that prior thereto certain holders of overdue coupons had exchanged the same for scrip certificates and funded-debt bonds bearing interest at the rate of seven per centum per annum, and that, such holders having refused to exchange the same for said graduated scrip and funded-debt bonds, said seven per cent. scrip and funded-debt bonds are still outstanding and unpaid; 7, that the total amount of the coupons deposited with the said Metropolitan National bank was three million and nine thousand eight hundred and fifty dollars and thirty-seven cents; 8, that the said coupons represented interest on said bonds falling due in 1875, 1876, and 1877, as follows, viz., on the bonds of the Toledo and Illinois Railroad Company four coupons, amounting to one hundred
293 and forty dollars, together with accrued interest thereon, amounting to twelve dollars and twenty-five cents, making in all one hundred and fifty-two dollars and twenty-five cents; on the bonds of the Lake Erie, Wabash and St. Louis Railroad Company four coupons, amounting to one hundred and forty dollars, together with the sum of twelve dollars and twenty-five cents accrued interest thereon, making in all one hundred and fifty-two dollars and twenty-five cents; on the first-mortgage bond of the Great Western Railway Company of 1859 four coupons, amounting to one hundred and forty dollars, together with the sum of twelve dollars and twenty-five cents accrued interest thereon, making in all the sum of one hundred and fifty-two dollars and twenty-five cents; on the bonds of the Illinois and Southern Iowa Railroad Company four coupons, amounting to one hundred and forty dollars, together with twelve dollars and twenty-five cents accrued interest thereon, making in all the sum of one hundred and fifty-two dollars and twenty-five cents; on the bonds of the Quincy and Toledo Railroad Company five coupons, amounting to one hundred and seventy-five dollars; on the bonds of the Decatur and East St. Louis Railroad Company five coupons, amounting to one hundred and seventy-five dollars; on the bonds of the Toledo and Wabash Railroad Company five coupons, amounting to one hundred and seventy-five dollars; on the bonds of the Wabash and Western Railway Company five coupons, amounting to one hundred and seventy-five dollars; on the second-mortgage bonds of the Great Western Railroad Company of 1859 five coupons, amounting to one hundred and seventy-five dollars, and on the consolidated mortgage of the Toledo, Wabash and Western Railway Company fourteen coupons, amounting to the sum of two hundred and forty-five dollars; 9, that default was made in the payment of interest upon the outstanding scrip certificates

on the first day of February, 1887, and on the first day
294 of February, 1888, and in the payment of the coupons upon the funded-debt bonds due on the first day of February, 1887, and on the first day of August, 1887, and on the first day of February, 1888, and on the first day of August, 1888; 10, that there is now owing and unpaid for principal and interest upon the scrip certificates based upon coupons from bonds of the Toledo and Illinois Railroad Company, together with interest on the defaulted interest payments at the rate of six per centum per annum to the first day of February, 1889, the sum of seventy-six thousand seven hundred and twenty dollars and twenty-nine cents, together with interest on said last-named sum from said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest on the funded-debt bonds based upon coupons from bonds of the Toledo and Illinois Railroad Company, together with interest on the overdue coupons from the respective dates of maturity thereof to the first day of February, 1889, the sum of eighty-five thousand three hundred and fifty-six dollars, together with interest on said last-mentioned sum from the said first day of February, 1889, to the date of this d-cree; that the amounts so found to be owing and unpaid on said scrip and said funded-debt bonds are a lien on the property mentioned and described in said mortgage executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company, as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 11, that there is now owing and unpaid for principal and interest on the scrip certificates based upon the coupons from bonds of the Lake Erie, Wabash and St. Louis Railroad Company, and interest at six per centum per annum on the defaulted pay-
295 ments of interest from the dates of such respective defaults to the first day of February, 1889, the sum of two hundred and thirteen thousand four hundred and forty-one dollars and thirty-seven cents, together with interest on said last-mentioned sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid on the funded-debt bonds based upon coupons from bonds of the said Lake Erie, Wabash and St. Louis Railroad Company for principal and interest at six per centum per annum upon the overdue coupons from the respective dates of maturity thereof the sum of two hundred and thirty-seven thousand one hundred dollars, together with interest on said last-mentioned sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be owing and unpaid on said scrip and said funded-debt bonds are a lien on the property mentioned and described in the said mortgage executed by the said Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof and payable out of the proceeds of any sale of said property *pro rata* therewith; 12, that there is now owing and unpaid for principal and interest upon the scrip certificates based upon cou-

pons from bonds of the Illinois and Southern Iowa Railroad Company, and interest at six per centum per annum on the defaulted interest payments from the dates of the said defaults respectively to the first day of February, 1889, the sum of one thousand two hundred and sixty-one dollars and twenty-one cents, together with interest on the said sum from the first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the funded-debt bonds based upon coupons from bonds of the said Illinois and
296 Southern Iowa Railway Company and interest upon the defaulted coupons from the respective dates of maturity thereof to the first day of February, 1889, at the rate of six per centum per annum, the sum of forty-nine thousand seven hundred and ninety-one dollars, together with interest on said sum from the first day of February, 1889, to the date of this decree; that the amounts so found to be owing and unpaid on said scrip and said funded-debt bonds are a lien on the property mentioned and described in the mortgage executed by the said Illinois and Southern Iowa Railroad Company to Lucien Tilton, James R. Jesup, and John N. A. Griswold, as trustees, added to the amount found to be secured by said mortgage, according to the tenor thereof, and are payable out of the proceeds of any sale of the said property *pro rata* therewith; 13, that there is now due, owing, and unpaid for principal and interest upon the scrip certificates based upon coupons from first-mortgage bonds of the Great Western Railroad Company of 1859 and interest at six per centum per annum on the defaulted interest payments from the dates of the respective defaults to the first day of February, 1889, the sum of one hundred and thirty-five thousand five hundred and sixty-five dollars and forty-five cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now due, owing and unpaid, for principal and interest upon the funded-debt bonds based upon coupons from said first-mortgage bonds of the Great Western Railroad of 1859 and interest upon the defaulted coupons at the rate of seven per centum per annum from the dates of maturity thereof respectively to the first day of February, 1889, the sum of three hundred and fourteen thousand seven hundred and fifty dollars and twenty-five cents, together with interest on said sum at seven
297 per centum per annum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be due on said scrip and said funded-debt bonds are a lien on the property mentioned and described in the said mortgage executed by the Great Western Railroad Company of 1859 to George Griswold, Alexander M. White, and Henry H. Warden, as trustees, added to the amount found to be secured by said mortgage, according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 14, that there is now owing and unpaid for principal and interest upon scrip certificates based upon coupons from bonds of the Quincy and Toledo Railroad Company and interest at six per centum per annum on the defaulted interest

payments from the dates of the respective defaults to the first day of February, 1889, the sum of nineteen thousand two hundred and eighty-nine dollars and forty-two cents, together with interest on said sum from said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the remaining outstanding scrip certificates based upon coupons from bonds of said Quincy and Toledo Railroad Company and interest at six per centum per annum upon the defaulted interest payments from the dates of such defaults respectively to the first day of February, 1889, the sum of thirty four thousand nine hundred and fifty-one dollars and twenty-two cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid upon the funded-debt bonds based upon coupons from said bonds of the Quincy and Toledo Railroad Company and interest at six per centum per annum on the overdue coupons from the dates of the respective maturities thereof to the first day of February, 1889, the sum of
298 forty-seven thousand five hundred and nineteen dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be owing and on said scrip and said funded-debt bonds are a lien on the property mentioned and described in said mortgage executed by the said Quincy and Toledo Railroad Company to John T. Terry, as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 15, that there is now owing and unpaid for the principal and interest upon scrip certificates based upon coupons from bonds of the Decatur and East St. Louis Railroad Company and interest at six per centum per annum upon the defaulted interest payments from the dates of the respective defaults to the first day of February, 1889, the sum of fifty-two thousand eight hundred and nine dollars and twenty-three cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the remaining outstanding scrip certificates based upon coupons from bonds of the said Decatur and East St. Louis Railroad Company and interest at six per centum per annum upon the defaulted interest payments from the date of such defaults respectively to the first day of February, 1889, the sum of one hundred and forty-nine thousand four hund redand thirty-nine dollars and sixty cents, together with interest on said sum at six per centum per annum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the funded-debt bonds based upon coupons from bonds of the Decatur and East St. Louis Railroad Company, and interest on the defaulted coupons belonging to said
299 funded-debt bonds from the dates of the maturity thereof respectively to the first day of February, 1889, at the rate of six per centum per annum, the sum of three hundred and forty thousand one hundred and sixty-six dollars and fifty cents, together with

interest on said sum from the first day of February, 1889, to the date of this decree; that the amounts so found to be owing and unpaid on said scrip and said funded-debt bonds are a lien on the property mentioned and described in the said mortgage executed by the Decatur and East St. Louis Railroad Company to Isaac H. Knox, as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 16, that there is now owing and unpaid for principal and interest upon the scrip certificates based upon coupons from bonds of the Toledo & Wabash Railroad Company and interest at the rate of six per centum per annum upon the defaulted interest payments from the dates of such defaults respectively to the first day of February, 1889, the sum of ninety thousand one hundred and fifteen dollars and fifty-three cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the funded-debt bonds based upon coupons from bonds of the said Toledo and Wabash Railway Company and interest on the defaulted coupons belonging to said funded-debt bonds from the dates of the maturity thereof respectively to the first day of February, 1889, at six per centum per annum, the sum of one hundred and thirty-six thousand seven hundred and fifty-two dollars, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be owing and upaid on said scrip and said funded-debt bonds are a lien on the property men-
300 tioned and described in the mortgage executed by the said Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of the said property *pro rata* therewith; 17, that there is now owing and unpaid for principal and interest upon the scrip certificates based upon coupons from bonds of the Wabash and Western Railway Company and interest upon the defaulted interest payments at six per centum per annum from the dates of the respective defaults to the first day of February, 1889, the sum of one hundred and twenty-five thousand eight hundred and seventy-eight dollars and ten cents, together with the interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the funded-debt bonds based upon coupons from bonds of the said Wabash and Western Railway Company and interest upon the overdue coupons belonging to said funded-debt bonds from the dates of maturity thereof respectively to the first day of February, 1889, at the rate of six per centum per annum, the sum of two hundred and fourteen thousand two hundred and forty-four dollars and eighty cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be owing and unpaid on said scrip and on said funded debts are a lien on the property mentioned and described in the said mortgage executed by the said Wabash and Western Railway Company to Ed-

win D. Morgan as trustee, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 18, that there is now owing and unpaid for principal and interest
301 upon a portion of the outstanding scrip certificates based upon coupons from the second-mortgage bonds of the Great Western Railroad Company of 1859 and interest at six per centum per annum on the defaulted interest payments thereon from the dates of such defaults respectively to the first day of February, 1889, the sum of forty-one thousand seven hundred and twenty-five dollars and sixty-eight cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the remaining outstanding portion of the scrip certificates based upon coupons from the second mortgage bonds of the Great Western Railway Company of 1859 and interest at six per centum per annum upon the defaulted interest payments thereon from the dates of such defaults respectively to the first day of February, 1889, the sum of one hundred and fifty-four thousand seven hundred and ninety-two dollars and fifty-one cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now owing and unpaid for principal and interest upon the funded-debt bonds based upon coupons from said second-mortgage bonds of the Great Western Railway Company of 1859 and interest upon the overdue coupons belonging to said funded-debt bonds from the dates of maturity thereof respectively to the first day of February, 1889, at the rate of six per centum per annum, the sum of three hundred and seventy-three thousand one hundred and thirty-seven dollars and sixty cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be owing and unpaid on said scrip certificates and said funded-debt bonds are a lien on the property mentioned and described in the said mortgage executed
302 by the said Great Western Railway Company of 1859 to Solon Humphreys and James R. Jesup as trustees, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith; 19, that there is now due, owing, and unpaid for principal and interest upon a portion of the scrip certificates based upon coupons from the consolidated mortgage bonds of the Toledo, Wabash and Western Railway Company and interest upon the defaulted interest payments at the rate of six per centum per annum from the dates of such defaults respectively to the first day of February, 1889, the sum of thirty-one thousand seven hundred and nineteen dollars and seven cents, together with interest upon said sum from the said first day of February, 1889, to the date of this decree; that there is also now due, owing, and unpaid for principal and interest upon the remaining portion of the outstanding scrip certificates based upon coupons from the consolidated mortgage bonds of the said Toledo, Wabash and Western Railway Company and interest upon the defaulted interest payments from the dates of

such defaults respectively to the said first day of February, 1889, at the rate of six per centum per annum, the sum of one hundred and thirty-one thousand three hundred and thirty-five dollars and seventy-two cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that there is also now due, owing, and unpaid for principal and interest upon the funded-debt bonds based upon coupons from the said consolidated mortgage bonds of the Toledo, Wabash and Western Railway Company and interest on the overdue coupons belonging to said funded-debt bonds from the respective dates of maturity thereof to the first day of February, 1889, at six per centum per annum, the
303 sum of six hundred and sixty-eight thousand seven hundred and eighty-two dollars and forty cents, together with interest on said sum from the said first day of February, 1889, to the date of this decree; that the amounts so found to be due on said scrip certificates and said funded-debt bonds are a lien on the property mentioned and described in the said consolidated mortgage executed by the Toledo, Wabash and Western Railroad Company to Isaac H. Knox and James R. Jesup as trustees, added to the amount found to be secured by said mortgage according to the tenor thereof, and are payable out of the proceeds of any sale of said property *pro rata* therewith.

XXIII.

And the court doth further find that the said funded-debt bonds and scrip certificates so issued and apportioned to the several mortgage liens as aforesaid constitute an e-largement of the principal of the several respective mortgage liens to the amount in each case of the said funded-debt bonds and scrip certificates so apportioned, and that the amounts of such funded-debt bonds and scrip certificates are in each case an integral part of the mortgage lien to which they were so apportioned, and secured by such mortgage the principal thereof equally *pro rata* with the principal of said bonds and the interest equally *pro rata* with the interest of said bonds, and are entitled to be paid out of the proceeds of the sale of the property constituting the security of such mortgages respectively.

XXIV.

It is therefore considered, ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption pay or cause to be paid into this court the sum of one hundred
304 and ninety-two thousand one hundred and ninety-five dollars and ninety cents ($192,195.90), together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company, as trustee, the sum on one hundred and sixty-six thousand nine hun-

dred and fifty dollars ($166,950), together with interest on said sum from the said first day of February, 1889, to the date of this decree at the rate of six per centum per annum; 2, for the use and benefit of the holders of the scrip certificates based upon coupons from bonds of the Toledo and Illinois Railroad Company, as hereinbefore mentioned, the sum of eleven thousand eight hundred and eighty-nine dollars and ninety cents ($44,889.90), together with interest thereon from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum; 3, for the use and benefit of the holders of the funded-debt bonds an- coupons based upon coupons of the said Toledo and Illinois Railroad Company the sum of thirteen thousand three hundred and fifty-six dollars ($13,356), together with interest thereon, at six per centum per annum, from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by the said Toledo and Illinois Railroad Company's mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as purchasing committee, and of all the other defendants in this cause of and
305 in and to the property mentioned and described in said mortgage executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company, as trustee, be forever barred and foreclosed, and that all and singular the railroad, property, equipment, and franchises in said mortgage, and hereinbefore particularly mentioned and described, be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXV.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successor or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption pay or cause to be paid into this court the sum of five hundred and fifty-three thousand nine hundred and twenty-eight dollars and fifty-four cents ($553,928.54), together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company as trustee the sum of four hundred and sixty-three thousand seven hundred and fifty dollars ($463,750), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the scrip certificates based upon coupons from bonds of the Lake Erie, Wabash and St. Louis Railroad Company, as hereinbefore

mentioned, the sum of thirty-three thousand and seventy-eight dollars and fifty-four cents ($33,078.54), together with interest on said sum, at the rate of six per centum
306 per annum, from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons from said bonds of the Lake Erie, Wabash and St. Louis Railroad Company the sum of thirty-seven thousand one hundred dollars ($37,100), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by the said mortgage executed by said Lake Erie, Wabash and St. Louis Railroad Company; that in default of such payments or any part thereof the equity of redemption of the defendants James F. *Hoy*, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and described in the said mortgage executed by the said Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustee, be forever barred and foreclosed, and that all and singular the railroad, property, equipment, and franchises in said mortgage, and hereinbefore particularly mentioned and described, be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXVI.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption in addition to the sums adjudged to be due upon the securities hereinbefore de-
307 scribed, secured by the said mortgage of the Toledo — Illinois Railroad Company, pay or cause to be paid into this court the sum of three hundred and eighty-two thousand nine hundred and fifteen dollars and three cents ($382,915.03), together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee, the sum of three hundred and thirty-one thousand one hundred dollars ($331,100), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the scrip certificates based upon coupons from bonds of the Toledo and Wabash Railway Company, as hereinbefore mentioned, the sum of twenty thousand and sixty-three dollars and three cents ($20,063.03), together with interest on said sum, at the rate of six per centum per annum, from the first day of February, 1889, to the date of this

decree; 3, for the use and the benefit of the holders of the funded debt and coupons based upon coupons from the bonds of the said Toledo and Wabash Railroad Company the sum of thirty-one thousand seven hundred and fifty-two dollars ($31,752), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by said mortgage of said Toledo and Wabash Railway Company;
that in default of such payment or any part thereof the equity
308 of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and described in said mortgage executed by the Toledo and Wabash Railway Company to Edwin D. Morgan, as trustee, be forever barred and foreclosed, and that all and singular the railroad, property, equipment, and franchises in said mortgage and hereinbefore particularly mentioned and described be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

## XXVII.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successor or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption, in addition to the sums adjudged to be due upon the securities hereinbefore described secured by the said mortgage of the Lake Erie, Wabash and St. Louis Railroad Company, pay or cause to be paid into this court the sum of five hundred and seventy-five thousand four hundred and nineteen dollars and ninety cents, $547,419.00, together with interest on said sum from the first day of February, 1889, to the date of this decree, at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bondsand coupons secured by the mortgage executed by the said Wabash and Western Railway Company to Edwin D. Morgan, as trustee, the sum of four hundred and ninety-six thousand six hundred and fifty dollars ($496,650), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the scrip certificates based upon coupons from bonds of the said Wabash and
309 Western Railway Company, the sum of twenty-eight thousand and twenty-five dollars and ten cents ($28,025.10), together with interest on said sum, at the rate of six per centum per annum, from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons based upon coupons from the bonds of the said Wabash and Western Railway Company, the sum of forty-nine

thousand seven hundred and forty-four dollars and fifty cents ($49,744.50), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by said mortgage of said Wabash and Western Railway Company; that in default of such payment or any part thereof the equity of redemption of the defendant- James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and described in said mortgage executed by the Wabash and Western Railway Company to Edwin D. Morgan, as trustee, be forever barred and foreclosed, and that all and singular the railroad, property, equipment, and franchises in said mortgage and hereinbefore particularly mention and described be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

## XXVIII.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment
310 of the said bonds or owning the equity of redemption pay or cause to be paid into this court the sum of fifty-five thousand six hundred and eighty-six dollars and forty-six cents ($55,686.46), together with interest on said sum from the first day of February, 1889, to the date of this decree, at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Illinois and Southern Iowa Railway Company to Lucien Tilton, John N. A. Griswold, and James R. Jesup, as trustees, the sum of forty-seven thousand seven hundred dollars ($47,700), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the scrip certificates based upon coupons from bonds of the Illinois and Southern Iowa Railroad Company the sum of one hundred and ninety-five dollars and forty-six cents ($195.46), together with interest on said sum, at the rate of six per cent. per annum, from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons based upon coupons from bonds of the said Illinois and Southern Iowa Railroad Company the sum of seven thousand seven hundred and ninety-one dollars ($7,791), together with interest on said sum, at the rate of six per centum per annum, from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property cov-

ered by said mortgage executed by said Illinois and Southern Iowa Railroad Company; that in default of such payment or any
311 part thereof the equity of redemption of the defend- James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause excepting the defendant John N. A. Griswold of and into the property mentioned and described in the said mortgage executed by said Illinois and Southern Iowa Railroad Company to said Tilton, Griswold, and Jesup, as trustees, be forever barred and foreclosed, and that all and singular the railroad, property, equipments, and franchises in said mortgage and hereinbefore particularly mentioned and described be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders, by the special masters hereinafter appointed.

## XXIX.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption pay or cause to be paid into this court the sum of three million four hundred and seventeen thousand three hundred and forty-one dollars and thirty-two cents, $3,417,341.82, together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the first-mortgage bond- and coupons of the Great Western Railroad Company, secured by mortgage to the Farmers' Loan and Trust Company, the sum of three thousand two hundred and seventy-five dollars and sixty-two cents, $3,275.62, together with interest thereon, at six per centum per annum, from the first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Great Western Railroad Company of
312 1859, to George Griswold, Alexander M. White, and Henry H. Warden as trustees the sum of two million nine hundred and sixty-three thousand seven hundred and fifty dollars, $2,963,750, together with interest on said sum from the said first day of February, 1889, to the date of this decree at the rate of six per centum per annum; 3, for the use and benefit of the holders of the scrip certificates, based upon coupons from the first-mortgage bonds of the Great Western Railroad Company of 1859, the sum of one hundred and thirty-five thousand five hundred and sixty-five dollars and forty-five cents, together with interest thereon from the said first day of February, 1889, to the date of this decree at the rate of six per centum per annum; 4, for the use and benefit of the holders of the funded-debt bonds and coupons, based upon coupons from the said first-mortgage bonds of the Great Western Railroad Company of 1859, the sum of three hundred and fourteen thousand seven hundred and fifty dollars and twenty-five cents, $314,750.25, together with interest on said sum at the rate of six per centum per annum

from the said first day of February, 1889, to the date of this decree; 5, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by said mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles as such purchasing committee and of all the other defendants in this cause of, in, and to the property mentioned and described in said mortgage executed by said Great Western Railroad Company of 1859 to said Griswold, White, and Warden as trustees be forever barred and foreclosed, and that all and singular the railroad
313 property, equipment, and franchises in said mortgage and hereinbefore particularly mentioned and described be sold as hereinafter directed at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXX.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption, in addition to the amounts heretofore adjudged to be due on the first mortgage of the Great Western Railroad Company, pay or cause to be paid into this court the sum of nine hundred and fifty-nine thousand six hundred and thirty-five dollars and seventy-nine cents, $959,635.79, together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the second mortgage of the Great Western Railroad Company of 1859, executed to Solon Humphreys and James R. Jesup as trustees, the sum of eight hundred and twenty-seven thousand seven hundred and fifty dollars, $827,750, together with interest on said sum from the first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the six per cent. scrip certificates based upon coupons from the second-mortgage bonds of the Great Western Railroad Company of 1859 the sum of thirty-four thousand four hundred and sixty-two dollars and fifty-one cents, $34,462.51, and for the use and benefit of the holders of the seven per cent. scrip certificates based upon coupons from said bonds the sum of ten thousand seven hundred and eighty-five dollars and sixty-eight cents,
314 $10,785.68, with interest on both sums at the rate of six per centum per annum from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons based upon coupons from said second-mortgage bonds of the Great Western Railroad Company of 1859 the sum of eighty-six thousand six hundred and thirty-seven dollars and sixty cents, $86,637.60, together with interest on said sum at the rate of six per centum per annum from the first day of

February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by the said mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles as such purchasing committee, and of all the other defendants of this cause of, in, and to the property mentioned and described in the mortgage executed by the said Great Western Railroad Company of 1859 to Solon Humphreys and James R. Jesup as trustees, be forever barred and foreclosed, and that all and singular the railroad property, equipment, and franchises in said mortgage and hereinbefore particularly described be sold as hereinafter directed at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

## XXXI.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns, or other persons obligated to the payment of the said bonds, or owning the equity of redemption, pay or cause
315 to be paid into this court the sum of ninety-seven thousand two hundred and nine dollars and sixty-four cents, $97,209.64 together with interest on said sum from the first day of February, 1889, to the date of this decree, at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Quincy and Toledo Railroad Company to John T. Terry as trustee the sum of eighty-two thousand nine hundred and fifty dollars, $82,950, together with interest on said sum at six per centum per annum from the said first day of February, 1889, to the date of this decree; 2, for the use and benefit of the holders of the six-per-cent. scrip certificates based upon coupons from the bonds of the Quincy and Toledo Railroad Company the sum of four thousand seven hundred and fifty-one dollars and twenty-two cents, $4,751.22, and for the use and benefit of the holders of the seven-per-cent. scrip certificates based upon coupons from the said bonds the sum of two thousand nine hundred and eighty-nine dollars and forty-two cents, $2,989.42, together with interest on both said sums from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons based upon coupons from bonds of the said Quincy and Toledo Railroad Company the sum of six thousand five hundred and nineteen dollars, $6,519, together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per cent. per annum; 4, that within this said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by said mortgage; that in default

of such payment or any part thereof the equity of redemp-
316 tion of the defendants James F. Joy, Ossian D. Ashely, Thomas H. Hubbard, and Edgar T. Welles as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and de-cribed in the mortgage executed by the said Quincy and Toledo Railroad Company to John T. Terry, as trustee, be forever barred and foreclosed, and that all and singular the railroad property, equipment, and franchises in said mortgage and hereinbefore particularly described be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXXII.

It is further ordered, adjudged, and decreed that within ten days after the entry of this d-cree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of said bonds or owning the equity of redemption, in addition to the various amounts hereinbefore adjudged to be due upon the divisional first and second mortgage bonds, pay or cause to be paid into this court the sum of four million three hundred and eleven thousand four hundred and eighty-nine dollars and nineteen cents, $4,311,489.19, together with interest on said sums from the first day of February, 1889, to the date of this decree at the rate of six per centum per annum—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the consolidated mortgage executed by the Toledo, Wabash and Western Railway Company to Isaac H. Knox and James R. Jesup, as trustees, the sum of three million four hundred and seventy-nine thousand six hundred and fifty-two dollars, $3,479,652, together with interest on said sum at the rate of six per centum per annum from the said first
day of February, 1889, to the date of this decree; 2, for
317 the use and benefit of the holders of the seven per cent. scrip certificates based upon coupons from bonds of the Toledo, Wabash and Western Railway Company the sum of thirty-one thousand seven hundred and nineteen dollars and seven cents, $31,719.07, and for the use and benefits of the holders of the six per cent. scrip certificates based upon coupons from said bonds the sum of one hundred and thirty-one thousand three hundred and thirty-five dollars and seventy-two cents, $131,335.72, together with interest on both said sums as six per centum per annum from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of the funded-debt bonds and coupons based upon coupons from bonds of the said Toledo, Wabash and Western Railway Company the sum of six hundred and sixty-eight thousand seven hundred and eighty-two dollars and forty cents, together with interest at the the rate of six per centum per annum from the said first day of February, 1889, to the date of this decree; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportions of the costs and expenses of this cause properly chargeable

to the property covered by the said mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and described in the mortgage executed by the said Toledo, Wabash and Western Railway Company to Isaac H. Knox and James R. Jesup, as trustees, be forever barred and foreclosed, and that all and singular the railroad property, equipment, and franchises in said mortgage and hereinbefore particularly described be sold as hereinafter directed at public auction, without
318 redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXXIII.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of said bonds or owning the equity of redemption pay or cause to be paid into this court the sum of five hundred and seventy-six thousand and fifteen dollars and thirty-three cents ($576,015.33), together with interest on said sum from the first day of February, 1889, to the date of this decree at the rate of six per cent. per annum—that is to say, 1, for the use and the benefit of the holders of the bonds and coupons secured by the mortgage executed by the said Decatur and East St. Louis Railroad Company to Isaac H. Knox, as trustee, the sum of five hundred thousand eight hundred and fifty dollars, $500,850, together with interest on said sum at six per centum per annum from the first day of February, 1889, to the date of this decree; 2, for the use and the benefit of the holders of the six per cent. scrip certificates, based upon coupons from bonds of the Decatur and East St. Louis Railroad Company the sum of twenty thousand three hundred and fourteen dollars and sixty cents, $20,313.60, and for the use and benefit of the holders of the seven per cent. scrip certificates based upon coupons from said bonds the sum of eight thousand one hundred and eighty-four dollars and twenty-three cents, $1,184.23, together with interest on both said sums as six per centum per annum from the first day of February, 1889, to the date of this decree; 3, for the use and benefit of the holders of funded-debt bonds and coupons, based upon coupons from said bonds the sum of forty-six thousand six hundred and sixty-six dollars
319 and fifty cents, $46,666.50, together with interest on said sum from the first day of February, 1889, to the date of this decree at six per centum per annum; 4, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by said mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles as purchasing committee, and of

all other defendants in this cause of, in, and to the property mentioned and described in said mortgage executed by the Decatur and East St. Louis Railroad Company to Isaac H. Knox, as trustee, be forever barred and foreclosed, and that all and singular the railroad property, equipments, and franchises in said mortgage and hereinbefore particularly described to be sold as hereinafter directed at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXXIV.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of said bonds or owning the equity of redemption pay or cause to be paid onto this court the sums following—that is to say, 1, for the use and benefit of the holders of the bonds and coupons secured by the mortgage executed by the Wabash Railway Company to Alfred T. White, as trustee, covering the property formerly known as the Hannibal and Naples railroad, the sum of ninety-nine thousand four hundred and fifty-eight dollars and thirty-three cents, $99,458.33, together with interest on said sum at six per
320 centum per annum from the first day of February, 1889, to the date of this decree; 2, that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the costs and expenses of this cause properly chargeable to the property covered by the said mortgage; that in default of such payment or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee as aforesaid, and of all the other defendants in this cause, of, in, or to the property mentioned and described in the mortgage executed by the Wabash Railway Company to Alfred T. White, as trustee, and which property was formerly known as the Hannibal and Naples railroad, be forever barred and foreclosed, and that all and singular the railroad property, equipment, and franchises in said mortgage and hereinbefore particularly described be sold as hereinafter directed at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXXV.

It is further ordered, adjudged, and decreed that within ten days after the entry of this decree the mortgagor corporation or its successors or assigns or other persons obligated to the payment of the said bonds or owning the equity of redemption, in addition to the amounts heretofore adjudged to be due upon the divisional first and second mortgages and the consolidated mortgage, pay or cause to be paid into this court the sums following—that is to say, for the use and benefit of the holders of the bonds and coupon- secured by the mortgage executed by the Wabash Railway Company to Solon Humphreys and Daniel A. Lindley, as trustees, the sum of two million

six hundred and seventy-six thousand six hundred and sixty
321 six dollars and sixty-six cents, $2,676,666.66, together with interest on said sum, at the rate of six per cent. per annum, from the first day of February, 1889, to the date of this decree; that within said time they also pay or cause to be paid into this court a sum of money sufficient to defray the proportion of the costs and expenses of this cause properly chargeable to the property covered by the said mortgage; that in default of such payments or any part thereof the equity of redemption of the defendants James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as such purchasing committee, and of all the other defendants in this cause of, in, and to the property mentioned and described in the said mortgage executed by the said Wabash Railway Company to Solon Humphreys and Daniel A. Lindley, as trustees, be forever barred and foreclosed, and that all and singular the railroad, property, equipments, and franchises in said mortgage and hereinbefore particularly described be sold, as hereinafter directed, at public auction, without redemption, to the highest bidder or bidders by the special masters hereinafter appointed.

XXXVI.

The periods of ten days herein limited for the various payments are so designated by consent in court of all parties.

And it is further ordered, adjudged, and decreed that in default of the several payments hereinbefore directed to be made or any of them the property mentioned and described in the mortgage or mortgages respectively as to which such default in payment shall be made shall be sold by the special masters hereinafter appointed at public auction, without apprais-ment or redemption, to the highest bidder or bidders, at the north door of the United States court-house and post-office building, in the city of Chicago, in the State of Illinois,
between the hours of ten o'clock a. m. and five o'clock p. m.,
322 on such day as the said special masters shall appoint, or upon such other day or days to which the said special masters shall adjourn such sale or sales. The said mortgaged property shall first be offered for sale separately as described respectively in each of the hereinbefore-mentioned divisional mortgages, and said special masters shall also offer for sale separately the line of railway from Clayton to Camp Point and the line of railway from Carthage to Elvaston, as described in the consolidated mortgage executed by the Toledo, Wabash and Western Railway Company to James R. Jesup and Isaac H. Knox, as trustees.

It is further ordered that along with each division above mentioned and with the line from Clayton to Camp Point and with the line from Carthage to Elvaston, when separately offered for sale, there shall be offered for sale in connection with the road and property as a part and parcel of the mortgaged premises an undivided proportion of the equipment, to be determined by the proportion that the mileage of each said division and said two lines respectively bears to the whole mileage of the road as hereinbefore in paragraph XIX found and declared.

The proceeds of sale of said divisions and lines respectively and of said equipment shall go together to the lienholders upon such divisions and lines respectively in the order of their priorities as hereinbefore found, but as to the equipment conditionally and subject to the right which is hereby specifically reserved of junior lienholders to assert and maintain, as they may be advised, their claim upon such proceeds of the said equipment, and in any such proceedings the proceeds and value of the said equipment, shall be determined by the schedules of Mark Miller Martin and Joshua B. Barnes, witnesses, given in evidence before the special masters in this cause and attached to their report, marked Exhibits
323 73, 79, and 115, and the locomotives shown in said last exhibit, not being included in the said valuation of Martin and Barnes, are hereby, for the purposes of future distribution of the proceeds thereof, valued at eight thousand dollars each.

It is further ordered that the said special masters shall accept no bid from any bidder who shall not forthwith, if required, deposit with them, either in cash or in bonds, as a pledge that he will make good his bid if accepted by the court, the sum of one hundred thousand dollars, $100,000, which sum so deposited shall be forfeited in case the said bidder shall fail to comply with the terms of sale and the orders of the court in that respect, but shall be applied on account of the purchase-money if the said sale shall be approved by this court and on compliance by such bidder with the said terms of sale and the orders of the court in that behalf; if such deposit be not made immediately the said property may be forthwith offered for sale and resold by the said special masters without notice.

It is further ordered that such bids shall in each case be accepted by the said special masters conditionally upon the result of the offer of said railways and property as a unit or entirety, as hereafter directed.

It is further ordered that the said special masters, after having offered said railways, property, and franchises for sale, as described in each of the hereinbefore-mentioned divisional mortgages, and the line from Clayton to Camp Point and the line from Carthage to Elvaston, separately, as above directed, shall then proceed to offer the said property for sale as a unit or entirety and free and clear of liens and incumbrances, viz., as described in the mortgage from the Wabash Railway Company to Solon Humphreys and Daniel A. Lindley as follows, viz:

324 "All the railroad, road-bed, and right of way of the said Wabash Railway Company extending from the city of Toledo, in the State of Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river at Hamilton, in said State, and with branch of said road leading from Decatur, in said State, to East St. Louis, in the same State, together with all the embankments, bridges, turn-outs, side tracks, buildings, and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines,

machinery, cars, tools, rolling stock, lots, lands, buildings, and offices, and other things, real and personal, at the date of said mortgage owned or used or that may thereafter have been owned or used by the said Wabash Railway Company in connection with the said railway, and every appurtenant thereto, and all the powers, privileges, franchises, and chartered or other rights of the said Wabash Railway Company." If the highest bid received by the said special masters for the said entire property shall exceed the aggregate amount of the highest bids for the several properties offered separately as hereinabove directed, then the said entire railway, property, and franchises as hereinabove described shall be struck off and sold as a unit and entirety to the person making such bid. If the highest bid received by the said special master- for the said entire property shall not exceed the aggregate amount of the highest bids for the several properties offered separately, then the sale of the said several properties shall become firm, subject only to the rights and power of the court to reject any bids and to retake and resell as herein reserved and provided. In case all the said property be sold as a unit and entirety the said special masters in their report
325 of sale shall bring into court a full record and report of the amounts of the bids made upon the respective divisions as hereinabove provided for the instruction of the court and to enable the court to use the same as a basis for the distribution in the further order or orders therefor, and the proceeds in the distribution shall be divided into as many separate parts as there were divisions and lines offered separately, such division being made in proportion to the amounts bid separately on said divisions and lines, respectively, and shall be distributed to the bondholders in the same manner as if said constituent parts had been sold separately.

It is further ordered that, also in case of the sale of said property as a unit or entirety, the purchaser may be required to deposit with the said special masters, in cash or in bonds, nine hundred thousand dollars, $900,000, as a pledge that he will make good his bid if the same shall be accepted by the court. Such deposit shall be forfeited if said purchaser shall fail to comply with the terms of sale and the orders of this court in that respect, but shall be applied on account of the purchase-money if said sale shall be confirmed by the court and on compliance by the purchaser with said terms of sale and the orders of this court. If the said deposit shall not be made immediately the said property may be forthwith offered for sale and resold by said special masters without further notice.

It is further ordered that, in offering the said property for sale as a unit or entirety, the said special masters may, in their discretion, omit therefrom the division of said railways and property known as the Hannibal and Naples division and covered by the mortgage to Alfred T. White, as trustee, together with its proportion of the rolling stock and equipment as found and declared in paragraph XIX of this decree; and if the said special masters shall
326 exercise the discretion hereby conferred and shall not include said division with the remainder of said railways and property when offered for sale as a unit and entirety, then the bid re-

ceived for said division and property when offered separately, with its proportion of equipment offered with it as above provided, shall become firm, and said division and property shall be conveyed to such purchaser upon confirmation of such sale, subject, as also hereinbefore specified, to the readjustment of any questions hereafter arising as to said proportion of equipment. The said special masters shall except no bids for either of the following four divisions, viz., the division from Toledo to the Indiana State line, the division running across the State of Indiana, the division running from the State line between Illinois and Indiana to Naples and Meredosia, and the division from Decatur to East St. Louis, for a less amount than the full amount of the first-mortgage liens as hereinbefore found in this decree, including the amount apportioned to the liens upon such divisions respectively for scrip certificates and funded-debt bonds, nor shall they receive any bid upon the said division running from Toledo to the Indiana State line for a less amount that the full amount of the first and second mortgages thereon, including the amounts apportioned thereto for scrip certificates and funded-debt bonds; and in case no bids shall be made on said divisions or either or any of them for said full amounts application for further directions and decrees in the premises at the foot of this decree may be made summarily and without notice, and the court reserves to itself the right and power to direct the sale to be made upon such terms and conditions as may then seem proper. The power of the masters for adjournment herein given shall cover
327 power to adjourn the sale a reasonable time to allow of such application to the court and to receive further direction thereon without any further advertisement or notice.

It is further ordered that the said special masters shall give public notice of the time and place of such sales by publication thereof at least once a week for four weeks in five newspapers of general circulation, one published in the city of Springfield, Illinois; one published in the city of Chicago, Illinois; one published in the city of Indianapolis, Indiana; one published in the city of Toledo, Ohio, and one published in the city of New York, which notice shall describe the property to be sold in general terms and shall refer to this decree for a fuller and more particular description thereof, said period of four weeks being designated by consent in court of all parties. The said special masters may give such further notice of sale, in addition to the notice above directed, as, in their judgment, they may think proper. The said sale may be adjourned by the said special masters at the time and place appointed by them as aforesaid, and said special masters may thereafter from time to time adjourn or postpone said sale, and may without further notice proceed with said sale on any day to which the same may thus have been adjourned. Said sale may also be continued from day to day by the said special masters if deemed by them necessary.

The right is hereby reserved by the court to reject any bid, and also to retake and resell the said property and premises or any part thereof upon failure of the purchaser to comply with any of the conditions of the sale or any of the orders of the court in that re-

gard. If the court reject any bid the purchaser shall receive back any deposit or payment he may have made. There shall be paid in cash of the price at which the said mortgaged premises and property shall be sold, in addition to the amount which may be
328 paid at the time of the sale, such further sums thereafter of the purchase-money as the court may direct. The remainder of such purchase price may be paid either in cash or in bonds with the overdue coupons thereto appertaining at such proportion or value as the holders thereof would be entitled to receive thereon in case the said purchaser price were paid by the purchasers in cash, and in all cases in which bonds shall be received by the said special masters, whether as a deposit at the time of the said sale or sales to bind the bids thereat or in payment of the remainder of the purchase price at the time of the consum-ation of such sale or sales, the said bond shall be so received at the rate or amount to which the holders thereof will be entitled to dividend thereon, and in case of the receipt of bonds for security at the time of sale the said special masters shall at the time exercise their judgment in determining the probable amount of the dividend to which such bonds will be entitled.

It is further ordered that the said special masters shall make report of all their proceedings to this court. It is further ordered that upon the confirmation of the sale by the court and the full payment of the whole of the purchase price therefor and compliance by the purchaser with the conditions of sale and the orders of the court in that behalf, the said special masters convey to the purchaser or purchasers or his or their assigns the premises and property so sold by good and sufficient deed therefor, which said deed or deeds when so executed and delivered shall vest in the grantee or grantees all the right, title, estate, interest, property, and equity of redemption except as hereby reserved of, in, and to all and singular the real estate,
property, premises, and franchises therein described in fee
329 simple forever and shall entitle said grantee or grantees to the possession thereof.

It is further ordered that all questions arising herein as to an accounting between the several different divisions of the said railways for or on account of or in relation to earnings and expenses and payments heretofore made by the receivers or any of them of coupons or any of the bonds secured by said mortgages upon said divisions be, and the same hereby are, reserved and all disposition of proceeds arising from sales made under this decree shall be made subject to the future settlement and adjustment of all such questions.

It is further ordered that the said special masters pay into this court the proceeds of such sale or sales, and that the same remain subject to the further order of this court, and such payment into court may be made, in the discretion of the masters, by deposit of the same to the credit of the court in such banks or trust companies as may be selected or approved by them. It is further ordered that Bluford Wilson, Esq., of Springfield, Illinois, and A. J. Ricks, Esq., of Cleveland, Ohio, be, and they are hereby, appointed special masters to execute and carry out the provisions of this decree and, upon

confirmation of the same, hereby directed to execute and deliver to the purchaser or purchasers conveyance of the property so sold. All other questions arising under any of the pleadings or proceedings herein not hereby disposed of or determined are hereby reserved for future adjudication, including the claim for unearned interest on bonds not yet due; and the defendant James Compton having, in open court on the final hearing herein, objected -o the rendering or entry of any decree in this cause at this time on the ground that the issues raised by the amendment to the complainant's amended and supplementary ancillary bill and to the cross-
330 bill of the cross-complainants, Solon Humphreys and Daniel A. Lindley, trustees, and the answer of the defendant James Compton to be filed herein have not been tried and determined, the court overrules such objection, and the defendant James Compton duly excepts to such ruling and of the entry of this decree; but it is adjudged and decreed in the premises that the rendering and entry of this decree in advance of the trial and determination of such issues is upon and subject to the following conditions, to wit: If upon the determination of such issues it shall be adjudged by this court that the decree rendered by the supreme court of the State of Ohio in the suit brought by said James Compton against the Wabash, St. Louis and Pacific Railway Company and others, referred to in the pleadings herein, and the lien thereby declared and adjudicated in his favor, continue in full force and effect, then the purchaser or purchasers at any sale or sales had thereunder of that portion of the property sold covered and affected by said lien or the successors in the title of said purchaser or purchasers shall pay to said James Compton or his solicitors herein, within ten days after the entry of the decree herein in favor of said James Compton, the sum of three hundred and thirty-nine thousand nine hundred and twenty dollars and forty cents, with interest thereon, at six per cent. per annum, from May 1, 1888, being the amount found due on the equipment bonds by him owned by the supreme court of Ohio in his said suit, upon the surrender by him of the bonds and coupons owned by him referred to in his petition in such suit, and in default of such payment this court shall resume possession of the property covered and affected by the said lien of the defendant James Compton, and enforce such decree as it may render herein in his favor by a resale of such property or otherwise as this court may direct.

331 And it is further ordered and adjudged that notwithstanding the entry of this decree the said issues concerning the claim and int-rest of said Compton shall proceed to a final determination and decree in accordance with the rules and practice of this court, and any decree rendered thereupon shall bind the purchaser or purchasers at any sale or sales had hereunder and all persons and corporations deriving any title to or interest in the said property affected by such lien from or through them or any of them, and nothing in this decree contained shall be construed as an adjudication of any matter or thing as against the said James Compton or to prejudice, annul, or abridge any right, claim, interest, or

lien which the said James Compton may have in, to, or upon the premises hereby directed to be sold or any part thereof, or in, to, or upon any property whatsoever embraced in this decree, it being the intention to hereby preserve the rights of said Compton in the relation in which he now stands towards the mortgagees parties hereto. Any sale, conveyance, or assignment of the railway and property hereinabove described made under this decree shall not have the effect of discharging any part of said property from the payment or contribution to the payment of claims or demands chargeable against the same, whether for costs and expenses, the expenses of the receivership of said property, and the full payment of all the debts and liabilities of the receivers of the Wabash, St. Louis and Pacific Railway Company, namely, Solon Humphreys and Thomas E. Tutt, Thomas M. Cooley and Gen. John McNulta, or upon intervening claims allowed or to be allowed, or upon any other claims or allowances that have been or may hereafter be charged against the property of the Wabash, St. Louis and Pacific Railway Company or any part thereof, or said receivers or either of them, or the adjustment of any equities arising out of the same between the parties hereto or their
332 successors either by this court or by the circuit court of the United States for the eastern district of Missouri, or by any United States circuit court exercising either original or ancillary jurisdiction over said property of the Wabash, St. Louis and Pacific Railway Company or any part thereof, or by the United States circuit court to which any of the parties in the consolidated cause of The Central Trust Company of New York and others against The Wabash, St. Louis and Pacific Railway Company and others, in the circuit court of the United States for the eastern district of Missouri, including the receivers, have been by said circuit court of the United States remitted in proceedings or actions ancillary to the jurisdiction of the last-named court or otherwise; nor shall any such sale, conveyance, transfer, or assignment made under and pursuant to this decree withdraw any of said railroad property or interests to be sold under this decree as hereinbefore directed from the jurisdiction of this and the other courts aforesaid, but the same shall remain in the custody of the receiver until such time as the court shall, on motion, direct said property in whole or from time to time in part to be released to the purchaser or purchasers thereof or any of them, and shall afterwards be subject to be retaken and, if necessary, resold if the sum so charged or to be charged against the said property or any part thereof or said receivers as aforesaid shall not be paid within a reasonable time after being required by order of this or said other courts. The conveyance and transfer of said property sold under this decree shall be subject to the powers and jurisdiction of the said courts and the purchasers of the property sold under this decree or any part thereof and the parties hereto or their successors shall thereby become and remain subject to said jurisdiction of said courts as far as
333 necessary to the enforcement of this provision of this decree, and such jurisdiction shall continue until all the claims and

demands that have been or may be allowed against said property of the Wabash, St. Louis and Pacific Railway Company or any part thereof or said receivers by order of said courts shall be fully paid and discharged. The provisions aforesaid shall apply to the purchasers of the same under this decree and all persons taking said property through or under them, but the foregoing provisions shall not nor shall any reservation in this decree contained have the effect or be construed nor are they or any of them intended to give to any claims that may exist any validity, character, or status superior to what they now have, nor to decide or imply that any such claims exist. The effect of said provisions and reservations shall be to prevent this decree operating as an additional defense to claims, if any there are, prior in right to the liens of the mortgages upon said property heretofore and hereby foreclosed and to preserve the prior right and lien of such claims and all allowances if found and decreed to exist; and the court reserves the right to make such further order and direction at the foot of this decree as may seem proper.

W. Q. GRESHAM,
*Judge 7th Circuit.*
HOWELL E. JACKSON,
*Circuit Judge.*

On the 29th day of April, 1889, defendant, by his attorneys, filed in said court a supplemental answer in said cause; which supplemental answer is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
334 THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.
No. 22624.

And now comes James F. Joy, —, by leave of court first had, files this his supplemental answer in this cause, and says that since filing his answer in this cause the United States circuit court- for the southern district of Illinois, for the district of Indiana, and for the northern district of Ohio, western division, have duly entered decrees in the cause pending therein, wherein James R. Jesup and Isaac H. Knox were complainants and The Wabash, St. Louis and Pacific Railway Company were defendants, being the same cause stated and referred to by this defendant in his original answer filed in this cause. He says further that said decrees were decrees for foreclosure and sale under all the mortgage existing against all said railway lines and property formerly belonging to the Wabash, St. Louis and Pacific Railway Company east of the Mississippi river, and said decrees fixed and determined the amount and priority of

the several liens upon said property and provided for the sale of all the said property, franchises, and interests to satisfy the said liens; that in accordance with the said decrees the commissioners appointed by the said court have set the 15th day of May, 1889, as the day for the sale of the said properties. The same took place at the United States court-house, in the city of Chicago, in the State of Illinois. This defendant says further that a copy of the said decree is attached to the answer of James Joy *et al.*, purchasing committee, to which he refers for more particular statement of the contents of said decree.

DILLON & SWAYNE,
*Att'ys of James F. Joy.*

STATE OF NEW YORK, }
*New York County,* } *ss:*

Rush Taggart, being duly sworn, says that he is one of the
335 attorneys for James F. Joy, defendant herein, and that the facts stated in the foregoing supplemental answer are true as he verily believes, and that he makes this affidavit because James F. Joy is a non-resident of the county of Lucas and now absent therefrom.

RUSH TAGGART.

Sworn to before me this 23rd day of April, A. D. 1889.
[SEAL.] WM. J. HARDIN,
*Notary Public, New York and Kings Counties.*

On the 29th day of April, 1889, defendant, by his attorneys, filed in said court an answer and cross-petition in said cause; which answer and cross-petition is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

*Answer and Cross-Petition of Charles G. Peters.*

Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, }
Plaintiff, }
*against* }
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and } Others, Defendants. }

Answer of Charles G. Peters to the petition and supplemental and amended petition of the plaintiff and to the cross-petition of William F. Redmond and others heretofore filed in this cause.

Now comes Charles G. Peters and, by leave of this court first had and obtained, appears in the above-entitled cause and filed herein this his answer and cross-petition, and by way of such answer says that he admits all and singular the averments of the petition and

supplemental and amended petition filed in this cause not hereinafter denied or modified, except any statement thereof relating to the validity and amount of liens on the railway property described in said petition and therein stated or admitted to be prior in date or superior to the lien of the equipment bonds issued by the Toledo and Wabash Railway Company described in the
336 said petition and supplemental and amended petition, and whereof the said Adelbert college is therein shown to be the holder of two bonds, and this defendant, as hereinafter stated, is the holder of twenty bonds, and all averments of priority or superiority of lien of any mortgage or other encumbrance to the lien of said equipment bonds described in said petition and in this answer are denied, and he admits all the averments and statements in the answer and cross-petition of the said William F. Redmond and others; and by way of cross-petition this defendant says that he is the owner and holder of the equipment bonds made by the Toledo and Wabash Railway Company, of the issue and class described in said petition, supplemental and amended petition, and cross-petition, to the amount at the par value thereof of twenty thousand dollars, and to each of which there are attached all the coupons thereof at the annual rate of interest of seven per centum per annum, payable semi-annually and evinced by semi-annual coupons beginning with coupon which matures on the first day of May, 1875, and thereafter accruing and maturing semi-annually until the maturity of said bonds on May 1, 1883, being in all seventeen semi-annual installments of interest of three and one half per cent. each, and he avers that all of said bonds to the amount of aforesaid twenty thousand dollars at par value and the coupons thereon, described as aforesaid, are severally due to him, with interest thereon from the date of maturity of the said bonds at the rate of seven per cent. per annum and with interest on the coupons aforesaid from the date of the several maturities thereof at the rate of six per cent. per annum until the present time, and that they will continue to bear interest as aforesaid until judgment as hereinafter prayed for, and that upon the principal of said bonds he is entitled to judgment at the rate of seven per cent. per annum until paid, and that upon the
337 interest and accumulated interest as aforesaid he is entitled to judgment to bear interest at the rate of six per cent. per annum until paid.

And further by way of cross-petition he avails himself of the invitation of the said cross-petition of said William F. Redmond and others to appear and unite in the prosecution of their petition and to contribute to the expenses thereof, and prays that he may be held and treated as associated cross-petitioner with the said William F. Redmond and others, cross-petitioners, and he adopts each and every averment of the cross-petition filed by the said William F. Redmond and others as his own, and asks that said averments and each of them may be treated as part of this his cross-petition without the repetition thereof, but with the same full force and effect as if they and each of them were fully inserted herein, repeated, and again stated at length, and he prays the same relief prayed for by the said William

F. Redmond and his associate cross-petitioners, and that the relief which may be granted to them in this cause may be extended so as to embrace him to the extent of his said bonds and coupons, and for such other and further relief as in equity and good conscience he may be entitled to.

GEO. HOADLY,
J. C. F. GARDNER,
*Att'ys for Charles G. Peters, Defendant and Cross-Petitioner.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Charles G. Peters, being duly sworn, says that he is the defendant and cross-petitioner named in the foregoing answer and cross-petition, and he believes that the statement in said answer and cross-petition to be true.

CHARLES G. PETERS.

Subscribed in my presence and sworn to before me this — day of April, 1889.

[SEAL.]

PERCY L. KLOCK,
*Notary Public* (31), *N. Y. Co.*

338 On the 29th day of April, 1889, defendants, by their attorneys, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILROAD COMPANY, Defendants.

*Reply of William F. Redmond and Others to the Answer of the Purchasing Committee.*

Now come William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins and Company; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker; Vassar Broth-

ers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, cross-petitioners, who have heretofore filed their cross-petition in this cause, and, by way of reply to the answer of Ossian D. Ashley, James F. Joy, Edgar T. Welles, and Thomas H. Hubbard, admit that the said Ashley, Joy, Welles, and Hubbard are constituted and acting as a purchasing committee on behalf of the holders of some of the mortgage bonds outstanding upon the lines of railway formerly owned by the Wabash, St. Louis and Pacific Railway Company, including therein bonds secured by the mortgages described in the cross-petition
339 of *of* these cross-petitioners made to Edwin D. Morgan, trustee, and to the Farmers' Loan and Trust Company, trustee, and claimed to be secured by lien upon the liens of railway formerly owned by the Toledo and Wabash Railway Company, but these cross-petitioners do not know how many of said purchases of bonds said Ashley, Joy, Welles, and Hubbard represent and are acting for, and therefore do not admit but deny the averment that they represent a very large majority of the same; secondly, further answering, these defendants say with reference to the averment of the answer of said Ashley, Joy, Welles, and Hubbard relating to the retention of possession of the premises described in their cross-petition by said United States courts, and to the beginning and prosecution of the said suits brought by said Atkins and others and Jesup and Knox and the appearance and filing of cross-bills by parties thereto, including the Farmers' Loan and Trust Company and said Joy, and the orders made therein by said United States courts, and the averment of the acquisition prior jurisdiction and control over said property and the defendants thereto by said courts, these cross-petitioners have no sufficient knowledge, information, or belief to authorize them to admit any of said averments, and therefore deny the same; thirdly, these cross-petitioners admit that the said property is now in possession of receivers appointed by the circuit court of the United States, which possession they have no intention or desire to disturb, but they say that they are not parties nor is any one of them a party to any of the proceedings, suits, or actions described in the answer of the said Ashley, Joy, Welles, and Hubbard, and they deny that the courts in which said actions are pending or any one of them has acquired prior jurisdiction and control of these cross-petitioners, or has the exclusive or any other right to de-
340 termine the right of these cross-petitioners, or that these cross-petitioners are required to seek relief in said proceedings and in said courts; on the contrary, they aver that by reason of the fact that one of these cross-petitioners resides in the State of Michigan, another in the State of Connecticut, others in the State of New York, and still others in the State of Ohio, the said circuit courts of the United States cannot acquire and are forbidden by law to acquire jurisdiction over these cross-petitioners or the right to control their interests in said property; fourthly, these cross-petitioners, further answering, say that they have no knowledge or information to enable them to form a belief sufficient to justify them in admitting that receivers' certificates have been issued under the

authority of courts of the United States in said causes pending therein named in said answer of said Ashley, Joy, Welles, and Hubbard, or the amount thereof, or that said purchasing committee became the owner or owners thereof or are equitably entitled to assert the lien thereof, or that said certificates or any of them are charged upon said property or any part of it by way of lien, and therefore they deny the same; fifthly, and by way of further reply to the second defense in said answer stated, these cross-petitioners say that they were not and no one of them was made party or served with process in any of the said causes named in said answer or in any cause in which receivers' certificates as described in said answer were authorized or issued, wherefore they deny that the said receivers' certificates, if any were issued or if any there be still outstanding, had or have any lien upon any part of said premises in anticipation or priority of the lien of the said equipment bonds held and owned by the said James Compton, the plaintiff, and these cross-petitioners; sixthly,
341 and by way of reply to the third defense, these cross-petitioners repeat all the allegations of the first, second, third, fourth, and fifth replies herein the same as if each were herein separately set forth as a part thereof, and further deny that the said cross-petitioners or any one of them, with full knowledge or any knowledge of the facts stated in the first and second defense in the said answer contained or of the said foreclosure proceedings, allowed the said defendants to go forward and purchase said properties and advance large sums of money therein without making any claim to any part thereof and without asserting any lien thereon or any part of the same. As to the averment in the said third defense contained that the said seventeen million dollars of bonds were put in the market and sold, and the several persons purchasing the said bonds did so without notice of the lien now claimed by the plaintiff, said James Compton, and said cross-petitioners, these defendants deny said averment and also deny that these cross-petitioners or the holders of the bonds now owned by them tacitly or otherwise permitted the execution of the said mortgages or the sale of bonds and the subsequent foreclosure and sale of said property or foreclosure of the same by said purchasing committee or the expenditure of large sums of money by said purchasing committee, or that these cross-petitioners and the plaintiff set forth and raised no claim of lien, although fully aware of such proceedings, and they deny that they were bound to give notice of lien, and they aver that all actings and doings aforesaid were subject to the lien of these cross-petitioners for the amount of their said equipment bonds and the interest thereon and with full legal and actual notice thereof. They further deny that the equities of these cross-petitioners have ever lapsed, or are in any way estopped from asserting their lien. Seventhly, and by way of reply to the fourth defense in said answer contained, these defendants say that while it is true
342 and they admit that the suit was brought in the circuit court of the United States for the district of Indiana as described

in the said answer of the said Ashley, Joy, Welles, and Hubbard, not, however, by Benjamin F. Ham and others, but by James Tyson, and to which Benjamin F. Ham and others became parties after and not at the time of its commencement, the said Tyson did not begin nor did the said Ham and others prosecute the same for these cross-petitioners or any of them, nor were these cross-petitioners or any of them (except Benjamin F. Ham individually and not as a partner with James M. Ham, under the firm name of Ham Brothers, in which capacity he brings this action) parties to said action, and they aver that no notice or opportunity was given in said action by order of court or otherwise to any of them or to any other holders of equipment bonds except those who were named as parties thereto to appear therein, and while the said judgment was rendered by the Supreme Court of the United States, as stated in said fourth defense, the same is not an estoppel of record except upon the parties thereto and therefore does not bind these cross-petitioners or any of them. They aver further that the action taken by the circuit court of the United States after the reversal by the Supreme Court of the United States described in said answer was after the commencement of this suit and during the pendency of this suit. Wherefore they deny that said proceedings of said Supreme and Circuit Courts of the United States are a bar to the prosecution of the cross-petition of the cross-petitioners in this action; and having fully answered, they pray as in their cross-petition prayed.

GEO. HOADLY AND JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

William F. Redmond, being duly sworn, says that he is
343 one of the cross-petitioners above named, and that he believes the statements of the foregoing reply to be true.

WILLIAM F. REDMOND.

Sworn to and subscribed in my presence this 26th day of April, 1889.

[SEAL.]

A. J. McCORMACK,
*Notary Public* (10), *N. Y. County.*

On the 29th day of April, 1889, defendants, by their attorneys, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

*Reply of William F. Redmond and Others to the Answer of James F. Joy.*

In the Court of Common Pleas, State of Ohio, Lucas County.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

Now come William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker; Vassar Borthers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, cross-petitioners, who have heretofore answered and filed their cross-petition in this case, and by
344 way of reply to the answer of James Joy say, first, as to the averments of said answer relating to the execution of a mortgage by the Toledo and Wabash and the Wabash and Western Railway Companies respectively to Edwin D. Morgan, the record of said mortgages, the execution of the bonds intended to be secured by the said mortgage, their issue and sale, and the amount thereof still claimed to be outstanding and unpaid with interest, with reference also to the averments of said answer relative to the alleged extension of said mortgage debt, the death of Edwin D. Morgan, the appointment of his successor, and his action as trustee under said mortgage and the alleged priority and superiority of the lien created by said mortgages, and also of the mortgage in favor of the Farmers' Loan and Trust Company as described in said answer, these cross-petitioners have no knowledge, information, or belief other than that stated in their cross-petition sufficient to authorize them to admit any of said averments, and therefore they deny the same, except so far as the same have been admitted in their said cross-petition; secondly, with reference to the *the* averments of said answer relative to the acquisition of the interests of the Wabash, St. Louis and Pacific Railway Company by the purchasing committee as stated in the cross-petition of these cross-petitioners, the continuance of the receivers in possession of said railways by order of the circuit court of the United States for the State- of Illinois, Indiana, and Ohio, their continued possession, the bringing of suit by Thomas Atkins and others for foreclosure, the appointment of re-

ceivers in said suit and their possession, the bringing of separate suits for the foreclosure of the first or divisional mortgages upon the various divisions of said railways, the consolidation of said suits, the extension of the receivership over such consolidation and
345 in said consolidated cause, the filing of cross-bills in said consolidated cause, and the action of the said United States courts therein, these cross-petitioners have no other knowledge, information, or belief than that contained in their cross-petition sufficient to enable them to admit the said averments or any of them, and therefore deny the same except so far as they are admitted by said cross-petition; thirdly, these cross-petitioners, by way of further reply, say that they have not been made parties to and are not in anywise affected or charged in any of the suits for foreclosure or other actions described in the answer of James F. Joy; wherefore they pray as in their original cross-petition they did pray.

GEO. HOADLY AND JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

William F. Redmond, being duly sworn, says that he is one of the cross-petitioners above named, and that he believes the statements of the foregoing reply to be true.

WILLIAM F. REDMOND.

Sworn to and subscribed in my presence this 26th day of April, 1889.

A. J. McCORMACK,
[SEAL.] *Notary Public* (10), *N. Y. County.*

On the 29th day of April, 1889, there was filed in said court a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

346 Court of Common Pleas, Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants. } No. 22624.

*Præcipe.*

The clerk will issue summons on the cross-petition of William F. Redmond and others, cross-petitioners (naming in the summons all of such cross-petitioners), for the defendant The Wabash Railway Company, addressed and directed to George W. Vultee, of New York city, and a like summons also for the Wabash, St. Louis & Pacific

Railway Company, addressed to Thomas W. Wheeler, of Toledo, Ohio, and each returnable according to law.

GEO. HOADLY &
J. C. F. GARDNER,
*Attorneys for Redmond et al.*

Thereupon a summons in said cause was issued by the clerk of said court to George W. Vultee, of New York city; which summons is in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

To George W. Vultee, of New York city:

You are commanded to notify the Wabash Railway Company that it has been sued by William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. W. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir; Gustavus Rollins and Edward A. Rollins, partners under the firm
347 name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead; George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Ailing, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, on cross-petition in the case of the Adelbert College of the Western Reserve University against the Wabash, St. Louis and Pacific Railway Company and others, in the court of common pleas of Lucas county, and that unless it answer by the 1st day of June, A. D. 1889, the cross-petition of the said above-named defendants against it filed in the clerk's office of said court such cross-petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 13th day of May, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this 29th day of April, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk*,
By N. HADNETT, *Deputy Clerk.*

On the 9th day of May, 1889, said summons was filed with the return thereon written in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County.* }

Received this writ May 2nd, 1889, and pursuant to its command I summoned on the seventh day of May, 1889, the within-named defendant, The Wabash Railway Company, by delivering a true

copy of the within summons, together with all endorsements thereon, to Cyrus W. Field, the last known president of the said The Wabash Railway Company in person.

GEORGE W. VULTEE.

Sworn to before me and subscribed in my presence this 7th day of May, A. D. 1889.

[SEAL.] MARK J. KATZ,
(73) *Notary Public of New York Co.*

348 Thereupon a summons in said cause was issued by the clerk of said court to Thomas W. Wheeler, of Toledo, Ohio; which summons is in the words and figures following, to wit:

THE STATE — OHIO, } ss:
*Lucas County,* }

To Thomas W. Wheeler, of Toledo, Ohio:

You are commanded to notify the Wabash, St. Louis and Pacific Railway Company that it has been sued by William F. Redmund, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins and Company; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John A. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Borthers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, on cross-petition in the case of the Adelbert College of the Western Reserve University against the Wabash, St. Louis and Pacific Railway Company and others, in the court of common pleas of Lucas county, and that unless it answer by the 1st day of June, A. D. 1889, the cross-petition of the said above-named defendants against it filed in the clerk's office of said court, such cross-petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 13th day of May, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this 29th day of April, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk,*
By N. HADNETT,
*Deputy Clerk.*

349 On the 9th day of May, 1889, said summons was filed with the return thereon written in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County.* }

Received this writ May 1st, 1889, and, pursuant to its command, I summoned on the second day of May, 1889, the within-named defendant, The Wabash, St. Louis and Pacific Railway Company, by delivering on the second day of May, A. D. 1889, to James F. Joy, at Detroit, Michigan, the last president of said The Wabash, St. Louis and Pacific Railway Company, a full, true, and certified copy of the within summons, together with all endorsements thereon.

T. W. WHEELER.

Sworn to before me and subscribed in my presence this 3rd day of May, A. D. 1889.

[SEAL.]

JAMES M. BROWN,
*Notary Public, Lucas County, Ohio.*

On the 7th day of May, 1889, being the 26th day of April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } 22624.

This day came the parties and thereupon the time for filing reply to the supplemental answer of James Joy by H. F. Redmond and others, cross-petitioners, is extended until June 1, 1889.

On the 13th day of May, 1889, being the 31st day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

350 THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } 22624.

Now come William F. Redmond and others, cross-petitioners, and present evidence of service of summons issued upon said cross-petition made as follows, viz., upon the Wabash, St. Louis and Pacific Railway Company, by Thomas W. Wheeler, of Toledo, Ohio, by delivery of a true copy of the said summons against the said Wabash, St. Louis and Pacific Railway Company to James F. Joy, the last-known president of said company, on the second day of May, 1889, and on the Wabash Railway Company, by delivery of a true copy of said summons issued against the said Wabash Railway Company by George W. Vultee on the seventh day of May, 1889, to Cyrus W.

Field, the last-known president of the Wabash Railway Company both of which services are proved by affidavits of the said Thomas W. Wheeler and George W. Vultee respectively, and both of which writs of summons with said affidavits in proof of service are filed in this court; whereupon, upon consideration thereof, it is ordered that the said service of said summons on said companies respectively be approved, and the said companies are respectively ruled to answer the said cross-petition by the first day of June, 1889, according to the commands of said summons respectively.

On the 25th day of May, 1889, defendants, by their attorneys, filed in said court a reply in said cause; which reply is in words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILROAD CO. and Others, Defendants. } No. 22624.

The reply of William F. Redmond and others, cross-petitioners, to the supplemental answer filed in this cause by James F. Joy, Ossian D. Ashley, E. T. Welles, and Thomas H. Hubbard.

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Now come William F. Redmond and his associated cross-petitioners and, by leave of the court first had, file this their reply to the said supplemental answer and, by way of such reply, say:

First. That they have no sufficient knowledge whereon to found a belief as to whether the averments of the said supplemental answer are true or not true, and they therefore deny the same.

Secondly. They say that they were not now was any one of them made parties to the said suits described in the said supplemental answer pending in the circuit court of the United States for the southern district of Illinois, for — district of Indiana, and for the northern district of Indiana and for the northern district of Ohio, western division, wherein James R. Jesup and Isaac H. Knox were complainants and The Wabash, St. Louis and Pacific Railway Company was defendant, nor have they or any one of them been made parties to any one of said suits, -or are they parties to any of said decrees, nor are they bound by any of said decrees, the said decrees and the said suits being transactions wholly between other persons and parties and not between them or any one of them and any other person or party, and therefore they say that the said suits and all things that have occurred in them and the said decrees and all things contained therein do not nor do any of them in any way effect any of the interest or rights of any of these cross-petitioners

or obstruct, hinder, or prevent or defeat the relief claimed by these cross-petitioners in their original cross-petition.

Wherefore they pray as in said cross-petition.

GEO. HOADLEY,
JOHN C. F. GARDNER,
*Attorneys for William F. Redmund and Others,*
*Cross-Petitioners.*

352 THE STATE OF NEW YORK, } ss:
*City and County of New York,* }

William F. Redmond, being duly sworn, says that he is one of the cross-petitioners in the above-entitled suit, and that he has heard read the foregoing reply, and that he believes the statements thereof to be true as therein contained and made.

WILLIAM F. REDMOND.

Subscribed in my presence and sworn to before me this 23rd day of May, 1889.

[SEAL.]

A. J. McCORMACK,
*Notary Public* (10), *N. Y. County.*

On the first day of June, 1889, there was filed in said court an affidavit and notice of publication in said cause; which affidavit is in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

I, Charles W. Selner, being duly sworn, say that I am a business manager of the Herald and Times, a weekly newspaper printed in Toledo and of general circulation in the county aforesaid, and that the annexed advertisement was published in said paper beginning on the April 17th day of A. D. 1889 and on each successive Wednesday for six weeks consecutively, commencing with that date.

CHARLES W. SELNER.

Sworn to and subscribed before me this 28th day of May, A. D. 1889.

[SEAL.]

ELSWORTH M. BEARD,
*Notary Public, Lucas County, Ohio.*

Said notice referred to above is in the words and figures following, to wit:

*Legal Notice.*

STATE OF OHIO, }
*Lucas County.* }

Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

The Wabash, St. Louis and Pacific Railway Company, the
353 Toledo, Wabash and Western Railway Company, and the Wabash Railway Company, each of which is a corporation organized under the laws of the State of Ohio and each of which has failed to elect officers or to appoint an agent upon whom service of summons can be made, as provided by section 5044 of the Revised Statutes of the State of Ohio, and no one of which has any place of doing business within the State of Ohio, will take notice that on the fifth day of January, 1889, in the aforesaid action heretofore brought by the Adelbert College of the Western Reserve University against the Wabash, St. Louis and Pacific Railway Company and others, now pending in the court of common pleas of Lucas county, in the State of Ohio, No. 22624, there was filed by leave of the said court and is now pending a cross-petition against them and others by William F. Redmond, John B. Manning; David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir; Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins and Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead; George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker; Vassar Borthers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, and Mary L. Oliveira, who sue not only — their own behalf, but that of all other holders of equipment bonds of the Toledo and Wabash Railway Company who may join in the prosecution of said cross-petition and contribute to the expenses thereof, the object and prayer of which cross-petition is for judgment marshalling the priorities of all liens and incumbrances upon the premises and railway, property,
354 equipment, rights, and franchises now or lately owned and operated by the Wabash, St. Louis and Pacific Railway Company, and in which said defendants respectively have or claim some interest, and which railway, premises, and property, equipment, rights, and franchises in the year 1862 and until the year 1865 and

in and after the year 1865 belonged to and constituted the railway, premises, property, equipment, rights, and franchises of the Toledo and Wabash Railway Company, a consolidated corporation of Ohio and Indiana, extending from Toledo westward through the counties of Lucas, Fulton, Henry, Defiance, and Paulding to the west line of Harrison township, in the county of Paulding, in the State of Ohio, the same being the boundary line of the States of Ohio and Indiana, and thence westward through the State of Indiana to the west boundary line thereof, and that it may be adjudged that by the execution, issue, and sale of bonds, called equipment bonds, of said Toledo and Wabash Railway Company to the amount, at their par value, of six hundred thousand dollars, bearing date November 1, 1862, and payable May 1, 1883, with interest from date at the rate of seven per cent. per annum, payable semi-annually, evidenced by coupons or interest warrants thereof, payable on the first days of November and May during each year until maturity of said bonds, of which equipment bonds said cross-petitioners are holders and owners in various amounts, shown in said cross-petition, to the total principal sum, at par, of one hundred and ninety thousand dollars, with interest at the rate aforesaid, and evidenced by coupons as aforesaid, beginning with coupons which matured May 1, 1875, and until the maturity of said bonds; also by the consolidation of said Toledo and Wabash Railway Company in the year 1865 with the Great Western Railway Company of 1859, the Quincy and Toledo Railway Company, and the Illinois and Southern Iowa Railroad Company, the last-named three companies being corporations organized under the laws of the State of
355 Illinois, and consolidated company being known by the name of the Toledo, Wabash and Western Railway Company, there was created and established a lien and incumbrance on all said railway, premises, property, equipment, rights, and franchises of said consolidated railway company for the protection and security of the said equipment bonds, which is prior and preferable to any title to or other lien or incumbrance on any of the said premises and property which were of the said Toledo and Wabash Railway Company and prior, preferable, and superior to any title to or lien or incumbrance of any other party to this cause except the lien and incumbrance of the plaintiff to the extent of two of said bonds and of said James Compton to the extent of one hundred and fifty of said bonds, with interest thereon, and the lien and incumbrance of other holders of said equipment bonds, which liens in favor of the plaintiff and said Compton and other holders aforesaid said cross-petition prays may be declared to be secured by the same lien with the said bonds held by said cross-petitioners and entitled to share *pro rata* in the distribution of the proceeds of any sale of said property; and the said cross-petition further prays that a receiver may be appointed to operate and manage said railway property and equipment during the pendency of this suit; that the cause may be referred to a master to ascertain who are the holders and the amount of their holdings of said equipment bonds other than those owned and held by the plaintiff, the said James Compton, and said cross-petitioners; that

in default of payment and redemption of said equipment bonds and the interest thereon at a day to be fixed, that the said railway premises, property, equipment, rights, and franchises may be sold as upon execution at law, free and clear from all claims and demands of all parties to said cause, and especially of said defendants to said cross-petition, and that after paying the costs of said cause
356 said proceeds be distributed and disbursed, so far as they may apply, in payment of the principal of the said equipment bonds and interest thereon at the rate of seven per cent. per annum and of the said coupons, with interest thereon from their respective due dates at the rate of six per cent. per annum, so far as the same are held by the plaintiff, the said James M. Compton, these cross-petitioners, and others who may prove themselves entitled thereto, and for general relief; and the said defendants are notified to appear and answer or demur to the said cross-petition on or before the 22nd day of June, 1889, in default of which said cross-petition will be taken as confessed and judgment entered accordingly.

Toledo, April 17, 1889.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

On the 10th day of June, 1889, being the 55th day of April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } 22624.

Now come William F. Redmond and others, his associate cross-petitioners, who have heretofore filed their cross-petition in this cause against the Wabash, St. Louis and Pacific Railway Company, the Wabash Railway Company, and the Toledo, Wabash and Western Railway Company, and files proof of publication for six consecutive weeks in the Weekly Herald and Times, a newspaper printed and of general circulation in the said Lucas county, containing a summary statement of the object and prayer of their cross-petition, mentioning the court wherein it is filed, and notifying the
357 Wabash, St. Louis and Pacific Railway Company, the Wabash Railway Company, and the Toledo, Wabash and Western Railway Company when they are required to answer said cross-petition, and it appearing to the court that said companies are and each of them is a corporation incorporated under the laws of this State which has failed to elect officers or to appoint an agent upon whom service of summons can be made as provided by section 5044 of the Revised Statutes of Ohio, and which has no place of doing business in this State, and that this is an action in which it is sought to appropriate the property of said companies or one

of them to the payment of the debts of the Toledo, Wabash and Western Railway Company, it is now ordered that said publication be approved and that the said defendant companies so notified and each of them answer or demur to the said cross petition at the time named in said publication.

On the 27th day of June, 1889, being the 70th day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
TOLEDO, WABASH AND W. R'Y CO. } 22624. Mo. 44.

Motion to set aside service of summons on James Compton off docket.

On the 27th day of June, 1889, being the 70th day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
TOLEDO, WABASH AND WESTERN RAILWAY CO. } 22624. Mo. 60.

Demurrer of Humphreys and Lindley, trustee, to cross-petition of Redmond *et al.* continued.

358 On the 20th day of July, 1889, being the 87th day of the April term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.* } 22624.

This day leave was given to all in default for pleadings to file the same by first day of next term.

On the 16th day of October, 1889, being the 10th day of the October term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
TOLEDO, WABASH AND WESTERN RAILROAD COMPANY *et al.* } 22624.

This day came the parties, and thereupon, on the application of the plaintiff, leave is given to it to file a second supplemental and amended petition herein on or before the 27th day of October, A. D. 1889, and in which and whereby it may make new parties defendant herein and cause the same to be brought in as such parties according to law.

And there also came the cross-petitioners herein, William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper and Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. John-
359 son, Chas. E. Thorne, James Moir, Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins and Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Welker, Vassar Bros. Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, Mary L. Oliviera, and Chas. G. Peters, heretofore made defendants in this cause, and who, have filed their answers and cross-petitions herein, upon the application therefore, are granted leave to file hereon on or before the 27th day of October, A. D. 1889, their amended answer and cross-petition and thereby make new parties defendant, and may cause the same to be brought in as such parties according to law.

On the 16th day of October, 1889, plaintiff, by its attorneys, filed in said court a second supplemental and amended petition in said cause; which petition is in the words and figures following, to wit:

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY *et al.*, Defendants. } No. 22624.

*Second Supplemental and Amended Petition.*

By leave of the court had and obtained, the plaintiff now comes and in addition to its original petition herein filed April 8th, 1883, and in addition to its supplemental and amended petition herein filed Feb. 2nd, 1889, and by way of supplement to and amendment of its said original and supplemental and amended petition, says that it here adopts and reaffirms all of the allegations of said orig-

inal and supplemental and amended petitions, and further says that since the filing of said original and supplemental and
360 amended petition- the railroad property and franchises in said original and supplemental and amended petition- described have been sold under the authority of the circuit courts of the United States for the northern district of Ohio and for the district of Indiana, and in a cause in which neither the plaintiff nor any of the cross-petitioners herein were parties, to the purchasing committee which is described in the original answer and cross-petition of William F. Redmund and others herein heretofore filed, and, the said sale having been confirmed by decrees of said courts, the said railway property and franchises were duly conveyed by masters or commissioners in chancery appointed by said courts, and under the authority of said court, to said purchasing committee and by said committee to a railroad corporation duly organized under the laws of Ohio and Indiana under the title of the Wabash Railroad Company; which railroad company has taken and is now in possession of the said railroad property, premises, equipment, and franchises described in the said original and supplemental and amended petitions, beginning in the city of Toledo and running through the counties of Lucas, Henry, Defiance, and Paulding, in the State of Ohio, to the said line of Indiana at the western boundary line of the township of Harrison, in said county of Paulding, and running thence in the State of Indiana westwardly to the boundary line of the State of Illinois.

That by proceedings had and taken in said cause in which said decree was rendered and in execution of the decrees of the said — mortgage bonds in the original petition herein described and secured respectively by the mortgages in the original answer described, namely, the mortgage made by the Toledo & Wabash Railway Company to the Farmers' Loan and Trust Company of New York, and the mortgage made by the same railway company to Edwin
361 D. Morgan, trustee, and of which mortgage James F. Joy afterwards became trustee, have been paid and the said mortgages fully satisfied and the same are no longer a lien or incumbrance upon any part of said railway property and franchises; that the lien of the said equipment bonds held by plaintiff, by said Compton, and by the said cross-petitioners, Redmond and others, herein is prior and superior to any mortgage lien or other incumbrance upon the said property, and especially is a lien prior and superior to the title of the said Wabash Railroad Company now in possession of said railway property, premises, equipment, and franchises as aforesaid.

Wherefore plaintiff prays as against the Wabash Railroad Company and all other defendants heretofore made parties hereto as in its original and supplemental and amended petitions it has heretofore prayed, and without repeating said prayer, but reaffirming it and asking that it may be taken as a part of this its second supplemental and amended petition. Plaintiff also further prays that the lien of the equipment bonds owned by it and described in its original answer may be declared to be the first and best lien upon said

railway property, premises, equipment, and franchises, superior to all other liens and titles whatsoever, and that in making sale of said premises, property, and franchises as prayed for in its original and supplemental and amended petitions all right, title, and interest acquired by the Wabash Railroad Company may also be sold for the purpose of producing the amount of money necessary to pay and discharge the said equipment bonds held by plaintiff, by said Compton, and by the cross-petitioners herein, and for such other and further relief as in equity and good conscience the plaintiff may upon final hearing prove itself to be entitled to.

LEE & BROWN,
*Att'ys for Pl'ff.*

362 STATE OF OHIO, } ss:
*Lucas County,* }

John C. Lee, being duly sworn, says that he believes the facts alleged in the foregoing supplemental and amended petition are true, and that he makes this affidavit because the plaintiff is a corporation. Affiant is the attorney of plaintiff in this action.

JOHN C. LEE.

Sworn to before me and subscribed in my presence this 16th day of October, A. D. 1889.

[SEAL.] RATHBURN FULLER,
*Notary Public, Lucas County, Ohio.*

On the 16th of October, 1889, there was filed in said court a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY }
*vs.* }
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. }

To the clerk of the court of common pleas aforesaid:

You will please issue summons for the Wabash Railroad Company upon the amended answer and cross-petition of William F. Redmond and others.

Yours truly,
GEO. HOADLY,
JOHN C. F. GARDNER,
*Attorneys for William F. Redmond and Others, Cross-Petitioners.*

October 16th, 1889.

Thereupon a summons in said cause was issued by the clerk of said court to the sheriff of Lucas county; which summons is
363 in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
*Lucas County,* }

To the sheriff of Lucas county:

You are commanded to notify the Wabash Railroad Company that it has been sued by William F. Redmond and others on amended answer and cross-petition in the case of the Adelbert College of the Western Reserve University against the Wabash, St. Louis and Pacific Railway Company and others in the court of common pleas of Lucas county, and that unless it answer by the 16th day of November, A. D. 1889, the amended answer and cross-petition of the said William F. Redmond and others against it filed in the clerk's office of said court, such amended answer and cross-petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 28th day of October, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this 16th day of October, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk,*
By N. HADNETT, *Deputy Clerk.*

On the 26th day of October, 1889, said summons was filed, with the sheriff's return thereon written in the words and figures following, to wit:

Received this writ on the 16th day of October, 1889, and on the 24th day of October, 1889, I summoned the within-named defendant, The Wabash Railroad Company, by delivering to J. H. Osborn, local freight agent of said company, a true and certified copy of this writ and of the endorsements thereon, the president, vice-president, secretary, and treasurer, and all other chief officers not being found in this county.

JOHN S. HARBECK, JR., *Sheriff,*
By W. H. HARBECK, *Deputy.*

364 On the 16th day of October, 1889, defendants, by their attorneys, filed in said court an amended answer and cross-petition in said cause; which amended answer and cross-petition is in the words and figures following, to wit:

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RES'VE UNIVERSITY, Plaintiff,
*against*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

Now Comes William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the

firm name of Kohn, Popper & Co.; James M. Ham and Be-jamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir; Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Borthers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, Mary L. Oliveira, and Charles G. Peters, heretofore made defendants to this cause, and who have filed their answers and cross-petitions herein, and by way or amended answer and cross-petition reaffirm each and every averment of their original answer and cross-petition, and ask that the same may be taken as part hereof by this reference without being set forth and repeated at large; and by way of further cross-petition these petitioners, not only in their own behalf, but for and on behalf of all holders of equipment bonds issued by the Toledo and Wabash Railway Company of the issue
365 and class described in the said petition who may appear and unite in the prosecution of this cross-petition and contribute to the espenses thereof, say that since the filing of the original answer and cross-petition by William F. Redmond and his associated cross-petitioners in this cause the railway property and franchises in said answer and cross-petition described have been sold under the authorty of the circuit courts of the United States for the northern district of Ohio and the district of Indiana, in a cause to which neither the plaintiff nor any of these cross-petitioners were parties, to the same purchasing committee described in the said original answer and cross-petition of William F. Redmond and others, and the said sale having been confirmed by decrees of said courts, the said property was duly conveyed by masters or commissioners in chancery appointed by said courts under the authority of said courts to the said purchasing committee and by them to a corporation duly organized under the laws of the State of Ohio and Indiana, under the title of the Wabash Railroad Company, which company has taken and is now in possession of the said railroad property, premises, equipments, and franchises described in the said original answers and cross-petitions of these cross-petitioners, beginning in the city of Toledo and running through the counties of Lucas, Fulton, Henry, Defiance, and Paulding, in the State of Ohio, to the State line of Indiana at the western boundary line of the township of Harrison, in the county of Paulding, and running thence in the State of Indiana westward to the boundary line of the State of Illinois; and these cross-petitioners further say that by proceedings had and taken in the said cause wherein said decrees were rendered and in pursuance to an execution of the said decrees all the said mortgage bonds in the said original answer and

cross-petition described and secured respectively by the
366 *by the* mortgages in the said cross-petition described, namely, the mortgage made by the Toledo and Wabash Railway Company to the Farmers' Loan and Trust Company of New York and the mortgage made by the same Toledo and Wabash Railway Company to Edwin D. Morgan, trustee, and of which mortgage James F. Joy afterwards became trustee, have been paid and the said mortgages fully satisfied and the same are no longer a lien or incumbrance upon any part of said property; and these cross-petitioners further aver that the lien of the said equipment bonds held by the plaintiff, by the said Compton, and by themselves and the lien of the other equipment bonds of the same issue, in behalf of the holders of which as well as of these cross-petitioners this answer and cross-petition is filed, is prior and superior to any mortgage, lien, or incumbrance upon the said property, and especially is a lien prior and superior to the title of the said Wabash Railroad Company, now in possession of said railway property, premises, equipment, and franchises as aforesaid.

Wherefore these cross-petitioners pray as against the Wabash Railroad Company and all other defendants heretofore made hereto as — their said original answers and cross-petitions they have heretofore prayed, and without repeating said prayer, but reaffirming it and asking that it may be taken as part of this their amended cross-petition, they also pray that the lien of the equipment bonds owned by them, described in their original answers and cross-petitions, may be declared to be the first and best lien upon the said railway property, premises, equipment, and franchises, superior to all other liens and titles whatsoever, and that in making sale of the said premises, property, and franchises, as prayed in the original answers and cross-petitions, all right, title, and interest acquired by the Wabash Railroad Company may be also sold for the purpose
367 of producing the amount of money necessary to pay and discharge the said equipment bonds held by the plaintiff, by the said Compton, and by these cross-petitioners, and for such other and further relief as in equity and good conscience these cross-petitioners may upon final hearing of this cause prove to be entitled to.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

STATE OF NEW YORK,
*City and County of New York,* } ss:

William F. Redmond, being duly sworn, says that he is one of the cross-petitioners above named; that he has heard read the foregoing amended answer and cross-petition, and that he believes the statement thereof to be true, and further says not.

WILLIAM F. REDMOND.

Subscribed in my presence and sworn to before me this 8th day of October, 1889.

[SEAL.] A. J. McCORMACK,
*Notary Public* (10), *N. Y. County.*

On the 16th day of October, 1889, there was filed in said court a præcipe for a summons in said cause; which præcipe is in the words and figures following, to wit:

*Precipe.*

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY CO. *et al.*, Defendants. } No. 22624.

The clerk will issue summons to the sheriff of Lucas county for the Wabash Railroad Company, returnable according to law.

Endorse on summons: "Equitable relief prayed for."

LEE & BROWN,
*Att'ys for Plaintiff.*

October 16th, A. D. 1889.

368 Thereupon a summons in said cause was issued by the clerk of said court to the sheriff of Lucas county; which summons is in the words and figures following, to wit:

THE STATE OF OHIO, } *ss:*
*Lucas County,* }

To the sheriff of Lucas county:

You are commanded to notify the Wabash Railroad Company that it has been sued by the Adelbert College of Western Reserve University in the court of common pleas of Lucas county, and that unless it answer by the 16th day of November, 1889, the petition, the supplemental and amended petition, the second supplemental & amended petition of said plaintiff against it filed in the cler-'s office of the said court, such petition, the supplemental & amended petition, the second supplemental & amended petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 28th day of October, A. D. 1889.

Witness J. P. Bronson, clerk of said court, and the seal thereof, at Toledo, this 16th day of October, A. D. 1889.

[SEAL.] J. P. BRONSON, *Clerk,*
By N. HADNETT, *Deputy Clerk.*

Said summons was endorsed as follows, to wit: Summons in action for equitable relief prayed for. Lee & Brown, attorney- for plaintiff.

On the 28th day of October, 1889, said summons was filed, with the sheriff's return thereon written in the words and figures following, to wit:

Received this writ on the 16th day of October, 1889, and on the 24th day of October summoned the within-named The Wabash Railroad Company by delivering to J. M. Osborn, the local freight agent of the said railroad company, a true and certified copy of this writ and of the endorsements hereon, the president, vice-president, secretary, treasurer, and all other chief officers not being found in this county.

369 JOHN S. HARBECK, JR., *Sheriff*,
By W. H. HARBECK, *Deputy*.

On the 28th day of October, 1889, being the 19th day of the October Term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.* } 22624.
THE TOLEDO AND WABASH AND WESTERN RAILROAD COMPANY *et al.*

This day came the parties and on their application therefore leave is granted to the plaintiff, and also to the cross-petitioners,, William F. Redmond, John B. Manning, David Kohn, Wm. M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Company; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Brothers; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Chas. S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir; Gustavus Rollins, and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead; George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, Josephine L. Cadmus, Preston Wing, Mary L. Oliviera and Charles G. Peters, to file reply instanter to the answer and cross-petition of James Compton herein filed April 15th, A. D. 1889, all of which is done accordingly.

On the 2nd day of December, 1889, being the 47th day of the October term, 1889, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

370 ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
TOLEDO, WABASH AND WESTERN RAILWAY COMPANY. } 22624.

On motion to the court, Wabash Railroad Company has leave to answer by December 20th.

On the 28th day October, 1889, plaintiff, by its attorneys, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

Court of Common Pleas of Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants. } No. 22624.

*Reply to Answer of Compton.*

The plaintiff now comes and for reply to the answer of James Compton herein filed April 15th, 1889, says that it was not a party to said action brought by said Compton, and wherein he recovered judgment and decree in the supreme court of Ohio, as in his answer alleged, nor is the plaintiff in any way bound thereby.

That it denies that its lien and claim as set forth in its amended and supplemental petition is inferior or subject to the lien and claim of said Compton upon said railway property as determined by his said judgment and decree.

That it also denies that the parties to the said actions and proceedings recited in the plaintiff's petitions, or that the holders of the bonds secured by said $50,000,000 mortgage or any of them, or that the said purchasing committee took any titles, rights, interests, claims,
or demands under said mortgage or under said proceedings
371 or under said purchase without notice of the claim of the plaintiff herein.

That plaintiff further avers that it was not a party to any of said litigations or controversies, and the same were conducted and determined and are now ended without the plaintiff having been made a party thereto or to any of them; that plaintiff, further replying, aver- that said proceedings to foreclose the said $50,000,000 mortgage to the Central Trust Company and James Cheney, and the said suits brought by Thomas B. Atkins and others and by Jesup and Knox, as trustees, and by the Farmers' Loan and Trust Company have all been ended and finally closed and all questions therein have been determined except such as may exist between said complainants or some of them and the said James Compton, and that all the property described in any of said bills of chancery or involved in any of said suits has been sold and the title thereto confirmed and possession thereof delivered and all of the receiverships therein have been closed, and the said premises and properties described in

the petitions herein and in the answers and cross-petitions of said Redmond and others and in the answer of said Compton is now in the possession of the Wabash Railroad Company, a railroad corporation of Ohio and Indiana, and is not in the possession of any receiver or in any way under the control of any court save and except this honorable court in the pendency and conduct of this action; that plaintiff, further replying, says that it knows nothing and has not information sufficient to form a belief as to the present state of the controversy between said Compton and others in said suits in said U. S. courts mentioned and set forth by said Compton in his said answer, and that plaintiff has not examined the pleadings therein and is without information sufficient to form a belief
372 whether said Compton is or not within the jurisdiction of said national court, and it therefore denied all the averments of said answer in relation thereto; that plaintiff, in further reply, says that it denies each and every averment of said Compton's answer which is in conflict with its petitions herein which it may not heretofore have specifically admitted, denied, or answered. Wherefore plaintiff prays for relief as in its petition.

LEE & BROWN,
*Att'ys for Pl'ff.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

John C. Lee, being duly sworn, says he believes the facts alleged in the foregoing reply are true, and that he makes this affidavit because he is one of the attorneys of plaintiff herein, and that plaintiff is a corporation under and pursuant to the laws of Ohio.

JOHN C. LEE.

Sworn to and subscribed before me this 21st day of October, A. D. 1889.

[SEAL.]

R. FULLER,
*Notary Public, Lucas County, Ohio.*

On the 28th day of October, 1889, defendants, by their attorneys, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

Court of Common Pleas, Lucas County, Ohio.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

The reply of William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Brothers; Israel M. Simon, Edward H. Litchfield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne,
373 James Moir; Gustavus Rollins and Edward Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William G. Creamer, George B. Mead, George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of the State of New York; Josephine L. Cadmus, Preston Wing, Mary L. Oliveira, and Charles G. Peters to the answer filed by James Compton to their cross-petition.

Now come the said cross-petitioners, William F. Redmond and others above named, and by way of reply to the answer filed by James Compton to their cross-petition say that they were not, nor was any of them, except Benjamin F. Ham, a party or otherwise impleaded in the suit brought by David J. Tyson against the said Wabash Railway Company and others, described in the said answer of James Compton, nor did the said suit involve the title of or any claim in reference to any of the bonds owned by any of these cross-petitioners. These cross-petitioners further deny that they have been guilly of any laches or neglect, or that their claim-, as asserted in their cross-petition, are barred by lapse of time or otherwise. They were never asked, solicited, or requested by said James Compton to furnish him any assistance in his said litigation, and he has persistently denied them any benefits therefrom and they now claim none. They do not know what money, time, and labor he has spent in prosecuting his suit and obtaining and maintaining his said decree, and they have no information upon which to found a belief relative thereto, and therefore deny all the averments of his answer in that regard. They deny that they are now seeking to reap the benefit of his efforts in his said suits or to participate in the results of his said litigation. They aver that they did move this honorable court to to admit them as parties to said litigation, as stated in their
374 cross-petition, but their motion was overruled and they have submitted thereto. They further aver that they were not parties to said action brought by said Compton and wherein he

recovered judgment or decree in the supreme court of Ohio as aforesaid, nor are they in any way bound thereby. They deny that their lien and claim and that of each of them is inferior or subject to the lien and claim of said Compton as determined by his said judgment or decree. They deny that the parties to the said actions and proceedings recited in their cross-petition or that the holders of the bonds secured by said fifty-million mortgage or any of them or that the said purchasing committee took any title, rights, interest, claims, or demands under said mortgage or under said proceedings or under said purchase without notice of the claim of these cross-petitioners or any of them. They aver that these cross-petitioners were not nor was any of them party to any of said litigations or controversies, but the same were wholly carried on, determined, and are now ended without their having been made parties thereto or to any of them. They deny that their equity has lapsed and is now barred by reason of said proceedings or otherwise, or that they or any of them are estopped from asserting the same. These cross-petitioners, further replying, aver that the said proceedings to foreclose the said fifty-million mortgage of the Central Trust Company and James Cheney and the said suits brought by Thomas B. Atkins and others and by Jesup and Knox, as trustees, and by the Farmers' Loan and Trust Company have all been ended and finally closed and all questions therein determined except such as may exist between said complainants or some of them and the said James Compton; and all the property enumerated and described in any of said bills of chancery or involved in any of said suits has
375 been sold and the title thereto confirmed and possession thereof delivered and all said receiverships have been closed and the said premises and property described in the complainant in this cause and in the answer and cross-petition of these cross-petitioners and in the answer of said Compton thereto is now in the possession of the Wabash Railway Company, a corporation of Ohio and Indiana, and not in the possession of any receiver or in any way under the control of any court except of this honorable court in the conduct of this action.

These cross-petitioners, further replying, say that they know nothing and have no information sufficient to form a belief as to the present state of the controversey between the said Compton and others in said suits in said United States courts. They have never seen the pleadings therein and do not know and have no information sufficient to justify a belief whether the said Compton is or is not within the jurisdiction of the said Federal courts, and they therefore deny all the averments of the answer relating thereto. Further replying, these cross-petitioners deny each and every averment of the said answer of James Compton in conflict with their answer and cross-petition and not hereinbefore specifically admitted, denied, or answered. Wherefore they pray as heretofore in their original answer and cross-petition prayed.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Att'ys for Pl'ff.*

STATE OF NEW YORK, }
*City and County of New York,* } ss:

William F. Redman, being duly sworn, says that he is one of the cross-petitioners above named, and that he believes the statements of the foregoing reply to be true.

WILLIAM F. REDMAN.

Subscribed in my presence and sworn to before me this 18th day of October, 1889.

[SEAL.]

A. J. McCORMACK,
*Notary Public, N. Y. County.*

376 On the 18th day of December, 1889, defendants, by its attorney, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

Court of Common Pleas, Lucas County, Ohio.

*Petition.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY —, THE Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup and Isaac H. Knox, as Trustees, and George I. Seney, Trustee; Solon Humphreys and Daniel A. Lindley, as Trustees, Defendants.

Cross-petition of William F. Redmond and others.

And now comes the Wabash Railway Company, by Dillon and Swayne, its attorneys, and says that it is a consolidated corporation of the States of Ohio, Michigan, Indiana, Illinois, and Missouri, and as such is the owner of the lines of railway formerly belonging to the Wabash, St. Louis and Pacific Railway Company, as hereinafter more particularly stated and alleged. By way of answer to the allegation of the petition and supplemental and amended petition of said plaintiff it says that it admits that on and prior to the first day of October, 1862, the Toledo & Wabash Railway Company was a corporation of the States of Ohio and Indiana and owning the line of railway, as in said petition set forth, in the States of Ohio and Indiana. It admits that on or about the first day of October, 1862, the directors of the said Toledo and Wabash Railway Company issued bonds of said company, known as equipment bonds, of substantially the tenor as in said petition set forth, with coupons and interest warrants attached thereto, and that said bonds were issued and sold long prior to the commencement of this action, but as to whether
377 or not plaintiff is a *bona fide* holder and owner for the value of the bonds and coupons in its petition set forth it has no knowledge or information sufficient to form a belief, and therefore

denies the same. It admits that on or about the 29th day of May, 1865, the said Toledo and Wabash Railway Company entered into an agreement of consolidation with the Great Western Railway Company of 1859, the Quincy and Toledo Railroad Company, and the Illinois and Southern Iowa Railroad Company, forming by such consolidation a new company, known as the Toledo, Wabash & Western Railway Company; and it admits that the said agreement for consolidation was consummated on or about the date named in said petition, but denies the effect claimed from said agreement of consolidation as in said petition alleged. It admits that on or about the first day of February, 1867, said new consolidated company, to wit, the Toledo, Wabash and Western Railway Company, executed a mortgage to James R. Jesup and Isaac H. Knox to secure the payment of consolidated bonds; and it avers that under said mortgage there was issued 2,610,000 of the said bonds provided for in the said mortgage. It admits that in said mortgage it was recited that the purpose of issuing said bonds was for the retirement of first and second mortgage bonds upon the properties in Ohio and Indiana, as in said petition recited and set forth, and it asks for a full recital of the effect of said mortgage that it may be enabled to produce the same upon the trial of this case. It admits that on or about the 6th of October, 1868, the said Toledo, Wabash & Western Railway Company entered into an agreement of consolidation with the Decatur and East St. Louis Railroad Company, forming a new corporation known as the Toledo, Wabash & Western Railway Company, and that the said agreement for the consolidation was duly perfected and the said Decatur &
East St. Louis Railroad Company became a part of the said
378 new company. It admits that on or about the 22nd day of
February, 1875, an action was instituted and petition filed in the court of common pleas of Lucas county, Ohio; that on or about the 24th day of February an action was instituted and complaint filed in the Cass county circuit court of the States of Indiana for the foreclosure of what is known as "the gold-bond mortgage," said suits being instituted by The Metropolitan National Bank of New York and others, plaintiffs, against the said Toledo, Wabash & Western Railway Company and others, defendants, and that a decree was entered for a foreclosure of the said gold-bond mortgage, and it craves leave to refer to the said proceedings for the effect thereof, but avers that in the proceedings no foreclosure was attempted of mortgages prior thereto and hereinafter enumerated and set forth by this defendant, but the said sale under said gold-bond mortgage was made expressly subject to the said prior mortgage liens, namely, the first mortgage made by the Toledo & Illinois Railroad Company for the sum of $900,000, being a first mortgage upon the line of railway within the State of Ohio; a second mortgage made by the Toledo and Wabash Railroad Company for $1,000,000, securing bonds of said company due November first, 1878, for that amount, being second mortgage upon the line of railroad in Ohio; a first mortgage made by the Lake Erie, Wabash & St. Louis Railroad Company for twenty-five hundred thousand dol-

lars ($2,500,000), securing first-mortgage bonds of that company due, as extended, August 1st, 1890, being a first mortgage upon the line of railroad within the State of Indiana; a second mortgage made by the Wabash & Western Railway Company for the sum of fifteen hundred thousand dollars, securing bonds of that company due November first, 1878. It admits that on or about the 17th day of May, 1879, the Wabash Railway Company made and exe-
379 cuted its certain mortgage or deed of trust to the defendants Solon Humphreys and Daniel A. Lindley, as trustees, to secure payment of an issue of bonds, as in said petition set forth, and this defendant says that bonds secured by said mortgage have been issued and outstanding to the amount of two million dollars. It denies the allegations of said petitions regarding the so-called "funding scheme," as set forth in the said complaint.

It admits that on or about the 14th day of August, 1879, the said Wabash Railroad Company consolidated its road, franchises, and capital stock with the capital stock, property, and franchises of the St. Louis, Kansas City & Northern Railway Company, and thereby formed a new corporation known as the Wabash, St. Louis & Pacific Railway Company, and that the said agreement of consolidation was duly consummated. It admits that all of the property, assets, and franchises of the Toledo, Wabash & Western Railway Company and of the Wabash Railway Company were vested in the said Wabash, St. Louis & Pacific Railway Company. It is not informed as to the payment or non-payment of the interest coupons of the said plaintiff, and therefore denies the same. It denies that upon the transfer of the property and franchises of the said Toledo and Wabash Railway Company to the said Toledo. Wabash & Western Railway Company, part of the consideration for such transfer was an agreement on the part of the said Toledo, Wabash & Western Railway Company to pay said bonds known as "equipment bonds," or that such transfer constituted said bonds a lien on the said property and franchises of said Toledo & Wabash Railway Company. It denies that said Toledo, Wabash & Western Railway Company, in executing the said consolidated mortgage, intended to recognize or did recognize a lien of said equipment bonds or other right in equity of the said equipment bonds to
380 be secured by the said consolidated mortgage to said Knox and Jesup, trustees; and for a further answer to the petition of the said plaintiff the Wabash Railroad Company says that it admits that the said Wabash, St. Louis and Pacific Railway Company on or about the first day of June, 1880, to secure an issue of its bonds, intended to be issued and disposed of, amounting in the aggregate to fifty million of dollars, made and executed to the Central Trust Company of New York, a corporation of the State of New York, and James Cheney, of the State of Indiana, as trustees, a mortgage or deed of trust known as its general mortgage, and thereby conveyed to said trustees, subject to all the prior liens thereon, all and singular the lines of railroad of the said Wabash, St. Louis and Pacific Railway Company, together with the equipments and appurtenances — franchises thereunto belonging, and that thereafter bonds secured

by said mortgage to the amount of $17,000,000 were sold and disposed of to *bona fide* purchasers and holders thereof. This defendant further says that on or about the 29th day of May, 1884, the said Wabash, St. Louis & Pacific Railway Company, being unable to discharge its obligations to pay interest upon bonds secured by mortgages upon its various lines of railway, as hereinafter recited, and also by reason of its large floating indebtedness, filed its bill of complaint in the United States circuit court for the eastern district of Missouri against the Central Trust Company of New York, James Cheney, and others, alleging its insolvency and inability to discharge said obligations, and that the interests of its creditors required that the said court should appoint receivers to preserve the said property for the benefit of said creditors, and that thereupon the said circuit court of the United States for the eastern district of Missouri appointed Solon Humphreys and Thomas E. Tutt as receivers
381 of said property and put the said receivers into possession of the same, and that thereafter by proper ancillary proceeding in the United States court for the southern district of Illinois, for the district of Indiana, and for the northern district of Ohio, western division, said Humphreys and Tutt were duly appointed by the United States circuit courts for the said districts as receivers and were put in possession of all the property of the said Wabash, St. Louis & Pacific Railway Company.

That thereafter the Central Trust Company of New York and James Cheney, as trustees of the said general mortgage, brought suits in the State courts of Ohio, Illinois, Indiana, and Missouri, alleging default in the payment of interest upon the bonds secured by said general mortgage and making the said Wabash, St. Louis & Pacific Railway Company and others parties defendant to the said bills of complaint; that said suits were thereafter removed to the United States circuit courts within those respective States, and thereafter by order duly entered consolidated with the suit brought by the Wabash, St. Louis & Pacific Railway Company, as hereinbefore stated; that thereafter and thereupon said Humphreys and Tutt continued as receivers of the said Wabash, St. Louis & Pacific Railway Company until on or about the — day of December, 1886, when the said Humphreys and Tutt were removed by the United States circuit court for the southern district of Illinois and Thomas Cooley was appointed as receiver, successor of said Humphreys and Tutt, for the properties of the said Wabash, St. Louis & Pacific Railway Company east of the Mississippi river; but said Humphreys and Tutt remained as receivers of the said Wabash, St. Louis & Pacific Railway Company's property west of the Mississippi river until the same was turned over to the purchasers at foreclosure sale, as hereinafter stated. Defendant says that in the said consolidated cause in the United States circuit court for the eastern district
382 of Missouri, southern district of Illinois, district of Indiana, northern district of Ohio, western division, decree of foreclosure of the said general mortgage was duly entered on or about the — day of ——, 1886, and sale duly had under the said decree

to the defendants herein, to wit, James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as purchasing committee, and that thereupon the said purchasing committee received a conveyance of all the property of the said Wabash, St. Louis and Pacific Railway Company and duly complied with the orders of said court and were put in possession on or about the — day of ——, of the property west of the Mississippi river; but as to the property east of the Mississippi river, on or about the — day of ——, 1885, other suits were begun by Thomas A. Atkins and James McHarg and others, bondholders under the mortgages to James R. Jesup and Isaac H. Knox, Solon Humphreys and Daniel A. Lindley, and in said suits thus brought by said Atkins and McHarg the said circuit court of the United States for the southern district of Illinois, district of Indiana, and northern district of Ohio, western division, entered orders appointing said Thomas M. Cooley as receiver of the properties of the Wabash, St. Louis and Pacific Railway Company east of the Mississippi river in said suits; that said Thomas M. Cooley continued as receiver of such properties until about the — day of April, 1887, when said Cooley resigned and John McNulta was appointed receiver, successor to said Cooley. It says further that on or about the — day of March, 1887, the said James F. Joy and others, purchasing committee, caused to be organized under the laws of the State of Missouri the Wabash Western Railway Company, and conveyed to said corporation the properties in the said State of Missouri formerly belonging to the Wabash, St. Louis & Pacific Railway Company, which thereafter continued to operate the same until the said Wabash and
383 Western Railway Company was merged in this defendant as hereinafter set forth. It says further that on or about the month of June, 1887, suits were begun as follows: By the Farmers' Loan and Trust Company of New York against the said James F. Joy and others, purchasing committee, the Central Trust Company and James Cheney and others, in the United States circuit court for the northern district of Ohio, western division, to foreclose a certain mortgage given by the Toledo & Illinois Railroad Company on or about the 8th day of September, 1853, the same being to secure an issue of bonds to the amount of $900,000 and being the first mortgage lien upon the premises formerly belonging to the Wabash, St. Louis & Pacific Railway Company, situated within the State of Ohio. To the said suit said James F. Joy was made defendant, as trustee successor in the trust to Edwin D. Morgan, deceased, to a certain mortgage executed by the Toledo and Wabash Railroad Company on or about the 15th day of October, 1858, to secure bonds of said company to the amount of $1,000,000, the said mortgage being the second mortgage upon the property formerly belonging to the Wabash, St. Louis and Pacific Railway Company situated within the said State of Ohio. The said Farmers' Loan & Trust Company also on or about the month of ——, 1888, filed its bill of complaint in the circuit court of the United States for the district of Indiana against the said James F. Joy and others, purchasing committee, and others, defendants, asking the foreclosure of a certain mortgage executed

and delivered by the Lake Erie, Wabash & St. Louis Railroad Company on or about the first day of August, 1853, to secure bonds of said company to the amount of $2,500,000. To said bill of complaint James F. Joy, trustee successor in trust to Edwin D. Morgan, deceased, was made a party, the said Joy being trustee of a certain mortgage made by the Wabash Western Railway Company on or about the 15th day of October, 1858,
384 to secure bonds of said company to the amount of $1,500,000, the said mortgage being second lien upon all of said premises formerly belonging to the Wabash, St. Louis & Pacific Railway Company within the State of Indiana upon the main line of said Wabash, St. Louis and Pacific Railway Company. Defendant says further that on or about the same dates the trustees of various mortgages upon portions of said line of railway formerly belonging to the Great Western Railway Company of 1859, the Illinois and Southern Iowa Railway Company, the Quincy & Toledo Railroad Company, the Hannibal & Naples Railroad Company, and the Decatur & East St. Louis Railroad Company filed bills of complaint for the foreclosure of certain mortgages which were respectively first liens upon said separate divisions of said railway; that prior to filing of said bills said James R. Jesup and Isaac H. Knox had filed bills of foreclosure in the consolidated mortgage executed and delivered in the year 1867 in the United States circuit courts for the southern district of Illinois, district of Indiana, and the northern district of Ohio, western division; that on or about the 22d day of October, 1888, by orders duly entered in all of said United States circuit courts in the said cause begun by said Jesup and Knox, *and* the suits brought by said Farmers' Loan and Trust Company and other trustees of first mortgages, as hereinbefore recited, were duly consolidated, and all the parties having liens or claiming liens upon said property, save and except the plaintiff in this suit and the cross-petitioners in this suit, were made parties to said proceedings in the United States circuit court, including therein James Compton, defendent herein; that orders were thereupon made appointing the said John McNulta receiver of said properties in the said consolidated cause, and said John McNulta thereupon qualified as such receiver and continued to hold
385 said property from date of orders under the first and second mortgage foreclosure proceedings; that in said consolidated cause the said James F. Joy, as trustee of the second mortgage of Ohio and Indiana, duly filed cross-bills asking for the foreclosure of said second mortgages, and said cause so proceeded; that on or about the — day of March, 1889, decree was duly entered in said cause *of* said courts, as in the supplemental answer of the purchasing committee herein is fully set forth; that said decrees were for the foreclosure and sale under all the mortgages existing against said railways, including therein the two mortgages hereinbefore named to the Farmers' Loan and Trust Company, trustees in Ohio and Indiana respectively, and the two mortgages to James F. Joy, trustee in Ohio & Indiana respectively, and also the consolidated mortgages to James R. Jesup and Isaac H. Knox and the consolidated

mortgage to Solon Humphreys and Daniel A. Lindley, trustees; that under and pursuant to said decrees of foreclosure A. J. Ricks and Bluford Wilson, duly appointed master commissioners by said circuit courts in the said decress, on the 15th day of May, 1889, sold all the said properties formerly belonging to the Wabash, St. Louis & Pacific Railway Company in the city of Chicago at the United States court-house, and said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as a purchasing committee, were the purchasers at said sale; that thereafter, by decrees duly entered in all of said courts, said sale was duly confirmed and said master commissioners, Wilson and Ricks, duly executed and delivered their deed as such commissioners to said James F. Joy and others, purchasing committee, and said James F. Joy and others, purchasing committee, duly complied with all the terms of said sale, and on or about the first day of July, 1889, were, by orders of said court, duly put in possession of said property as purchasers at said foreclosure sale.

386 That thereafter corporations were duly formed in the States of Ohio, Michigan, Indiana, and Illinois, which, by consolidation with the Wabash & Western Railway Company of the State of Missouri, formed this defendant, and that prior to said consolidation said purchasing committee duly conveyed to each of said companies the lines of railway within the said respective States, and that said defendant or said constituent corporations have been in possession of said properties under and pursuant to said deeds since the date of the execution and delivery thereof. This defendant says further, by way of answer to the cross-petition of William F. Redmond and others, that it adopts all the allegations of the answer of the purchasing committee and of the supplemental answer of the said purchasing committee, and also adopts all the allegations of its answer heretofore made to the petition of the plaintiff as a part of this its answer to the said cross-petition. It says further that it is vested with all the title and rights formerly belonging to the said Farmers' Loan & Trust Company under the said two mortgages hereinbefore recited as made by the said Toledo & Illinois Railroad Company and the Lake Erie, Wabash & St. Louis Railroad Company, and likewise is invested with all the right, title, and interest formerly vested in James F. Joy, trustee of the mortgages executed by the Toledo & Wabash Railroad Company and the Wabash & Western Railroad Company, as hereinbefore recited. It says further that the said mortgages in both Ohio and Indiana cover all the property described in the petition or in the cross-petition filed in this cause as having belonged to the Toledo and Wabash Railway Company in the States of Ohio and Indiana, and that the same were valid and outstanding mortgages to the full amount of the principal of the bonds named in the said two mortgages, together with a large amount of interest thereon, and prior to any claimed lien that can be asserted on behalf of the plaintiff or the cross peti-

387 tioners herein. This defendant further says that it adopts all the allegations of the answer and supplemental answer of the said purchasing committee, and asks that the same may be taken as

part of its answer as though here set out in full. This defendant likewise says that it adopts all the allegations of the answer filed by James F. Joy, and asks that the same may be taken as its answer the same as though set forth in full in this its answer. Therefore this defendant asks to be dismissed with its costs.

DILLON & SWAYNE,
*Att'ys for Wabash Railroad Company.*

STATE OF NEW YORK,
*City and County of New York,* } *ss:*

Rush Taggart, being duly sworn, says he is one of the attorneys for the defendant, and that the defendant is a corporation; that it believes the allegations of the foregoing answer to be true.

RUSH TAGGART.

Sworn to before me this 11th day of December, 1889.
[SEAL.] T. E. FELL,
*Notary Public, Kings Co., N. Y.*

Certificate filed in New York Co.

On the 6th day of January, 1890, being the 1st day of the January term, 1890, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

388 ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.* } 22624.
TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.*

This day came the parties, by their attorneys, and thereupon the plaintiff and the defendant- and cross-petitioners, William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co.; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchfield, Irving D. Ferry, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James M. Moir; Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, George B. Mead; George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, Mary L. Oliveira, and Charles G. Peters, upon their motion therefor, were granted leave to file reply to the answer of the Wabash Railroad Company, filed hereon on the — day of December, 1889, instanter; all of which is done accordingly.

On the 7th day of January, 1890, plaintiff, by its attorney, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.

389 Court of Common Pleas of Lucas County, Ohio.

*Reply of Plaintiff to the Answer of the Wabash Railroad Company.*

Now comes the plaintiff and for reply to the answer of the Wabash Railroad Company herein filed on the — day of December, 1889, says it admits that the said Wabash Railroad Company is a consolidated corporation duly organized under the laws of the States of Ohio, Michigan, Indiana, Illinois, and Missouri, and as such it has come into possession during the pendency of this suit of the lines of railroad formerly belonging to the Wabash, St. Louis and Pacific Railway Company, including the line of railway in the States of Ohio and Indiana, described in the cross-petitions of William F. Redmond and others herein filed, and as to which relief is prayed by them therein. Second. In further answer the plaintiff says with reference to the averments of the said answer relating to the appointment of receivers and the taking possession of the premises described in said answer by such receivers and the beginning and prosecution of the said suits for the sale of said premises described therein, and the filing of cross-bills thereto, including the filing of cross-bills by the Farmers' Loan and Trust Company, and the orders made in said suits by the said United States court, and generally as to the course and manner of proceedings in said suits, and as to the acquisition of prior jurisdiction and control over said property and over the defendants to said suits by said courts, that the plaintiff has no sufficient knowledge, information, or belief to justify it in admitting any of the said averments, and therefore it denies the same. Third. The plaintiff further avers that it is not and was not a party to any of the said proceedings, suits, or actions described in said answer, and it denies that the courts in which said suit or suits were pending or any of them have acquired or attempted to acquire jurisdiction or

390 *or* control over plaintiff or had the exclusive or any right whatever to determine the rights of the plaintiff, or that plaintiff was required to seek relief in said proceedings and in said courts; and, on the contrary, plaintiff avers that said circuit courts of the United States did not acquire jurisdiction over plaintiff or the right to control its interest in said property by reason of the fact of the residence of plaintiff or by reason of any fact in said answer alleged; Fourth. The plaintiff, further replying to said answer, avers that no action was taken or had and no suit commenced or possession of said premises acquired by, had, or held by the Farmers' Loan and Trust Company or by any of the holders of the bonds secured by the said mortgages made by the Toledo & Illinois Railroad Company and by the Lake Erie, Wabash & St. Louis Railroad Company or either of them to the Farmers' Loan and Trust Company described in the said answer until more than 21 years after the causes of action had

severally accrued in favor of the said Farmers' Loan & Trust Company and said bondholders for the collection of said bonds and the enforcement and foreclosure of said mortgages and each of them and more than 21 years after the accruing of the rights of plaintiff as described in its original and amended petition.

Wherefore plaintiff says that by lapse of time, laches, and the statute of limitations the said Wabash Railway Company has lost all right to assert any lien or incumbrance upon said premises growing out of or founded on the said mortgages made by the said Toledo and Illinois Railroad Company and the said Lake Erie, Wabash and St. Louis Railroad Company or either of them.

Fifth. By way of reply to that part of the said answer which adopts the allegations of the answer and supplemental an-
391 swer of the purchasing committee and the answer of James P. Joy and adopts the allegation of its answer heretofore made to the petition of plaintiff as part of its answer to plaintiff's petition the plaintiff ado-ts as part of this reply all the allegations of this reply heretofore filed to the answer and supplemental answer of the purchasing committee and the answer of James F. Joy as fully and completely as if the same were herein repeated and set forth at large, and prays that the same and every allegation thereof may be treated as a reply by it to the answer of the said railroad company.

Sixth. Further replying, the plaintiff denies that the said mortgages of the said Toledo & Illinois Railroad Company and the Lake Erie, Wabash & St. Louis Railroad Company to the Farmers' Loan & Trust Company, described in said answer, are in existence as valid and outstanding incumbrances on the said premises. It avers that the same *has* been fully paid and discharged, cancelled, and satisfied, and that they are no longer any lien upon the said premises or any part thereof. Thereupon plaintiff prays as in its petition it has heretofore prayed.

LEE & BROWN,
*Att'ys for Pl'ff.*

STATE OF OHIO, }
*Lucas County,* } *ss:*

John C. Lee, being duly sworn, says that he believes the facts alleged in the foregoing reply are true, and that he makes this verification because the plaintiff is a corporation under the laws of Ohio and affiant is one of its attorneys in this action.

JOHN C. LEE.

Sworn to before me and subscribed in my presence this — day of January, A. D. 1890.

[SEAL.] RATHBURN FULLER,
*Notary Public, Lucas County, Ohio.*

392 On the 7th day of January, 1890, defendants, by their attorneys, filed in said court a reply in said cause; which reply is in the words and figures following, to wit:

*Reply of William F. Redmond and Others to the Answer of the Wabash Railway Company.*

STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others, Defendants.

Now come William F. Redmond, John B. Manning, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Company; James M. Ham and Benjamin F. Ham, partners under the firm name of Ham Bros.; Israel M. Simon, Edward H. Litchifield, Irving D. Ferrey, John S. A. Wittke, James M. Ham, Henry W. Smith, Charles S. Webb, Jane A. Sullivan, Ella R. Johnson, Charles E. Thorne, James Moir; Gustavus Rollins and Edward A. Rollins, partners under the firm name of Rollins & Co.; Eugene E. Bishop, Frederick Hubbard, William C. Creamer, George B. Mead; George B. Mead and Walter M. Aikinson, executors, and Eliza Mead, executrix, of H. R. Mead, deceased; John W. Alling, E. Kellogg Beach, Clarence Morfit, James Walker, Vassar Brothers Hospital, a corporation of New York; Josephine L. Cadmus, Preston Wing, Mary L. Oliveira, and Charles G. Peters, cross-petitioners, who have heretofore filed their cross-petition in this cause, and by way of reply to the answer of the Wabash Railway Company admit that the said Wabash Railroad Company is a consolidated corporation, duly organized under the laws of the States of Ohio, Michigan, Indiana, Illinois, and Missouri, and as such has come into possession during the pendency of this suit and since the filing of their cross-petitions of the
393 lines of railway formerly belonging to the Wabash, St. Louis and Pacific Railway Company, including the lines of railway in the States of Ohio and Indiana described in the cross-petitions of these cross-petitioners, and as to which relief is prayed by them therein; secondly, further answering, these cross-petitioners with reference to the averments of the said answer relating to the appointment of receivers and the taking possession of the premises described in said answer by such receivers and the beginning and prosecution of the said suits for the sale of said premises described therein and the filing of the cross-bills thereto, including the filing of cross-bills by the Farmers' Loan and Trust Company and the orders made in said suits by the said United States courts and generally as to the course and manner of proceedings in said suits and as to the acquisition of prior jurisdiction and control over said property and over the defendants to said suits by said courts, these cross-petitioners have no sufficient knowledge, information, or belief to justify

them in admitting any of the said averments, and therefore deny the same; thirdly, these cross-petitioners further aver that they are not and were not nor is nor was any one of them a party to any of the said proceedings, suits, or actions described in said answer, and they deny that the courts in which said suits were pending or any one of them have acquired or attempted to acquire jurisdiction or control of these cross-petitioners or had the exclusive or any right to determine the rights of these cross-petitioners, or that these cross-petitioners were required to seek relief in said proceedings and in said courts; on the contrary, they aver that said circuit courts of the United States could not and were forbidden by law to acquire jurisdiction over these cross-petitioners or the right to control their interest in said property by reason of the fact of the residence of some one or more of these cross-petitioners in each of the States of Michigan, Connecticut, New York, and Ohio,
394 in which the said complainants in said suit reside; fourthly, these cross-petitioners, further replying to said answer, aver that no action was taken or had and no suit commenced or possession of said premises acquired by or had or held by the Farmers' Loan and Trust Company or by any of the holders of the bonds secured by the said mortgages made by the Toledo and Illinois Railroad Company and the Lake Erie, Wabash and St. Louis Railroad Company or either of them to the Farmers' Loan and Trust Company described in the said answer until more than twenty-one years after the causes of action had severally accrued in favor of said Farmers' Loan and Trust Company and said bondholders for the collection of said bonds and the enforcement and foreclosure of said mortgages and each of them and more than twenty-one years after the accruing of the rights of these cross-petitioners as described in their original cross-petition; wherefore these cross-petitioners say that, by lapse of time, laches, and the statutes of limitation, the said Wabash Railway Company has lost all right to assert any lien or incumbrance upon said premises growing out of or founded on the said mortgages made by the said Toledo and Illinois Railroad Company and the said Lake Erie, Wabash and St. Louis Railroad Company or either of them; fifthly, by way of reply to that part of the said answer which adopts the allegations of the answer and supplemental answer of the purchasing committee and the answer of James F. Joy and adopts the allegations of its answer heretofore made to the petition of the plaintiff as part of its answer to said cross-petition these cross-petitioners adopt as part of this reply all the allegations of their replys heretofore filed to the answer and supplemental answer of the purchasing committee and the answer of James F. Joy as fully and completely as if the same were
395 herein repeated and set forth at large and prayed that the same and every allegation thereof may be treated as a reply by them to the answer of the said railroad company; sixthly, further replying, these cross-petitioners deny that the said mortgages of the said Toledo and Illinois Railroad Company and the Lake Erie, Wabash & St. Louis Railroad Company to the Farmers' Loan and Trust Company described in the said answer are in existence as valid and

outstanding incumbrances on the said premises; they aver that the same have been fully paid and discharges, cancelled, and satisfied, and that they are no longer a lien upon the said premises or any part thereof; and, having fully replied, they pray as in their respective cross-petitions *as* they have heretofore prayed.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Attorneys for Cross-Petitioners.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

William F. Redmond, being duly sworn, says that he is one of the cross-petitioners named in the foregoing reply; that he has read the said reply and is acquainted with its contents; that he believes the statements thereof to be true.

WILLIAM F. REDMOND.

Subscribed in my presence and sworn to before me this 4th day of January, 1890.

[SEAL.]

A. J. McCORMACK,
*Notary Public, N. Y. County.*

On the 28th day of March, 1890, being the 71st day of the January term, 1890, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

396 ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY *vs.* TOLEDO, W. & W. R'Y CO. } 22624. Mo. 18.

Demurrer of Humphreys and Lindley, trustees, to answer and cross-petition of Redmond *et al.* continued.

On the 30th day of April, 1890, being the 20th day of the April term, 1890, of said court, an order in said cause was made, an entry of which appears on the journal of said court in the words and figures following, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY CO. *et al.* } 22624.

This day came Henry F. James, and upon his own application he is made a party defendant herein, with leave to file his answer and cross-petition herein forthwith, all of which is done accordingly.

On the 30th day of April, 1890, defendants, by his atterneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

*Answer and Cross-Petition of Henry F. James.*

STATE OF OHIO, }
*Lucas County.* }

Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*against*
THE WABASH, ST. LOUIS & PACIFIC RAILWAY CO. and Others, Defendants. } 22624.

Answer of Henry F. James to the petition and supplemental and amended petition of the plaintiff and to the cross-petition of William F. Redmond and others heretofore filed in this cause.

Now comes Henry F. James, and, by leave of the court first had and obtained, appears in the above-entitled cause and files herein this his answer and cross-petition, and by way of such answer says that he admits all and singular the averments of the petition and
397 supplemental and amended petition filed in this cause not hereinafter denied or modified, except any statement thereof relating to the validity and amount of liens on the railway property described in the said petition and therein stated or admitted to be prior in date or superior to the lien of the equipment bonds issued by the Toledo and Wabash Railway Company described in said petition and supplemental and amended petition, and whereof the said Adelbert College is therein shown to be the holder of two bonds and this defendant, as hereinafter stated, is the holder of ten bonds and all averments or priority or superiority of lien of any mortgage or other incumbrances to the lien of said equipment bonds described in said petition and in this answer are denied, and he admits all the averments and statements in the answers and cross-petitions of the said William F. Redmond, Charles G. Peters, and others; and by way of cross-petition this defendant says that he is the owner and holder of equipment bonds made by the Toledo & Wabash Railroad Company of the issue and class described in the said petition, supplemental and amended petition, and cross-petition, to the amount at the par value thereof of eight thousand dollars, and to each of which there are attached all the coupons thereof at the annual rate of interest at seven per cent. per annum, payable semi-annually and evidenced by semi-annual coupons, beginning with coupon which matures on the first day of May, 1875, and thereafter accruing and maturing semi-annually until the maturity of said bonds on May 1, 1883, being in all seventeen semi-annual installments of interest of three and one-half per cent. each, and he avers that all of said bonds to the amount aforesaid of eight thousand dollars at par value and the coupons thereon, described as aforesaid, are severally due to him, with interest thereon from the date of the maturity of
398 the said bonds at the rate of seven per cent. per annum, and with interest on the coupons aforesaid from the date of the

several maturities thereof at the rate of six per cent. per annum until the present time, and that they will continue to bear interest as aforesaid until judgment, as hereinafter prayed for, and that upon the principal of said bonds he is entitled to judgment at the rate of seven per cent. per annum until paid, and that upon the interest and accumulated interest as aforesaid he is entitled to judgment to bear interest at the rate of six per cent. per annum until paid.

And further by way of cross-petition avails himself of the invitation of the said cross-petition of said William F. Redmond and others to appear and unite in the prosecution of their petition and to contribute to the expense thereof, and prays that he may be held and treated as associated cross-petitioner with the said William F. Redmond and others and Charles G. Peters, cross-petitioners, and he adopts each and every averment of the cross-petition filed by the said William F. Redmond and others and Charles G. Peters as his own, and asks that said averments and each of them may be treated as part of this his cross-petition without the repetition thereof, but with the same full force and effect as if they and each of them were fully inserted therein, repeated, and again stated at length, and he prays the same relief prayed for by the said William F. Redmond and his associates, cross-petitioners, and Charles G. Peters, and that the relief which may be granted to them in this cause may be extended so as to embrace him to the extent of his said bonds and coupons, and for such other and further relief as in equity and good conscience he may be entitled to.

GEO. HOADLY AND
JOHN C. F. GARDNER,
*Attorneys for Henry F. James, Defendant and Cross-Petitioner.*

399 CITY AND COUNTY OF NEW YORK, *ss:*

Edward C. James, being duly sworn, says that he is the attorney for the defendant and cross-petitioner, Henry F. James, named in the foregoing answer and cross-petition, and that he believes the statements in said answer and cross-petition to be true; that the reason why said answer and cross-petition is not verified by the said Henry F. James is that said Henry F. James is absent from the State of Ohio and from the county of New York; that this deponent is the agent and attorney of said Henry F. James, is in possession of the bonds mentioned in said answer and cross-petition, and in familiar with the matter stated therein.

EDWARD C. JAMES.

Sworn to before me this 28th day of April, 1890.
[SEAL.] JOHN G. DAVIS,
*Notary Public, N. Y. Co.*

On the 5th day of June, 1890, defendants, by their attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILROAD COMPANY, The Wabash Railroad Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup and Isaac H. Knox, Trustees; George I. Seney, Trustee, & Solon Humphreys and Daniel A. Lindley, as Trustees.

Answer of James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles to a cross-petition of Henry F. James.

And now come James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles as a purchasing committee and for answer to the cross-petition of Henry F. James say that they adopt as their answer to the said cross-petition all the allegations
400 of all answers filed by them to the petition of the plaintiff and to the cross-petition of William F. Redmond and others the same as if those allegations were here fully set forth in detail in this answer.

DILLON & SWAYNE,
*Attorneys for James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, Purchasing Committee.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Rush Taggart, being duly sworn, says that he is one of the attorneys for the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and he believes it to be true, and that this verification is made by him as attorney because the defendants are non-residents of the county of Lucas and are now absent from said county.

RUSH TAGGART.

Sworn to before me this 3rd day of June, 1890.

[SEAL.] WM. J. HARDIN,
*Notary Public, New York and Kings County, State of New York.*

On the 5th day of June, 1890, defendants, by their attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County.* }

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, }
Plaintiff, }
*vs.* }
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, }
Defendants. }

Answer of James F. Joy to cross-petition of Henry F. James.

The defendant James F. Joy now comes, and by way of answer to the cross-petition of Henry F. James says that he adopts all the allegations of his answer filed herein to the cross-petition of William F. Redmond *et al.* the same as if said allegations were
401 all set forth in detail herein as an answer to the cross-petition of Henry F. James.

DILLON & SWAYNE,
*Attorneys for James F. Joy.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Rush Taggart, being duly sworn, says that he is one of the attorneys of James F. Joy in the above-entitled action; that he has read the foregoing answer and knows the contents thereof and believes the same to be true; that the said Joy is a non-resident of the county of Lucas and now absent therefrom, and that on — account this verification is made — his attorney.

RUSH TAGGART.

Sworn to before me this 3rd day of June, 1890.
[SEAL.] WM J. HARDIN,
*Notary Public, New York and Kings Counties, State of New York.*

On the 5th day of June, 1890, defendant, by its attorneys, filed in said court an answer in said cause; which answer is in the words and figures following, to wit:

THE STATE OF OHIO, }
*Lucas County.* }

*Answer of the Wabash Railway Company to Cross-Petition of Henry F. James.*

In the Court of Common Pleas.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY, }
Plaintiff, }
*vs.* }
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, }
Defendants. }

And now comes the Wabash Railroad Company and, by way of

answer to the cross-petition of Henry F. James, says it adopts as its answer thereto its answer heretofore filed to the petition of the plaintiff and the cross-petition of William F. Redmond and others the same as if the same were here repeated. The Wabash Railway Company further says that in and by the decree of the United States circuit court in and for the southern district of Illinois, the
402 district of Indiana, and the northern district of Ohio, western division, of date of March 23d, 1889, under which the said sale of May 15th, 1889, took place, it was provided as follows relative to the said railroads and property, to wit:

"All other questions arising under any of the pleadings or proceedings herein not hereby disposed of or determined are hereby reserved for future adjudication, including the claim for unearned interest on bonds not yet due; and the defendant James Compton having in open court on the final hearing herein objected to the rendering or entry of any decree in this cause at this time on the ground that the issues raised by the amendment to the complainant's amended and supplemental ancillary bill and to the cross-bill of the cross-complainants, Solon Humphreys and Daniel A. Lindley, trustees, and the answers of the defendant James Compton to be filed herein have not been tried and determined, the court overrules such objection and the defendant James Compton duly excepts to such ruling and the entry of this decree; but it is adjudged and decreed in the premises that the rendering and entry of this decree in advance of the trial and determination of such issues is upon and subject to the following conditions, to wit: If upon the determination of such issues it shall be adjudged by this court that the decree rendered by the supreme court of Ohio in the suit brought by said James Compton against the Wabash, St. Louis and Pacific Railway Company and others, referred to in the pleadings herein, and the lien thereby declared and adjudicated in his favor continue in full force and effect, then the purchaser or purchasers at any sale or sales had hereunder of that portion of the property sold covered and affected by said lien or the successors in the titles of said purchaser or purchasers shall pay to said James Compton or his solicitors herein, within ten days after the entry of the decree herein in favor of said James Compton, the sum of three hundred and thirty-nine thousand nine hundred and twenty dollars and forty
403 cents, with interest thereon at six per cent. per annum from May 1st, 1888, being the amount found due on the equipment bonds be him owned by the supreme court of Ohio, in his said suit, upon the surrender by him of the bonds and coupons owned by him referred to in his petition in such suit; and in default of this payment this court shall resume possession of the property covered and effected by the said lien of the defendant James Compton and enforce such decree as it may render herein in his favor by a resale of such property or otherwise as this court may direct.

"And it is further ordered and adjudged that notwithstanding the entry of this decree the said issues concerning the claim and interest of said Compton shall proceed to a final determination and decree in accordance with the rules and practice of this court, and

any decree rendered thereon shall bind the purchaser or purchasers at any sale or sales had hereunder and all persons or corporations deriving any title to or interest in the said property effected by such a lien from or through them or any of them, and nothing in this decree shall be construed as an adjudication of any matter or thing against the said James Compton or to prejudice, annul, or abridge any right, claim, interest, or lien which the said James Compton may have in, to, or upon the premises hereby directed to be sold or any part thereof, or in, to, or upon any property whatsoever embraced in this decree, it being the intention to hereby preserve the rights of said Compton in the relation in which he now stands towards the mortgagees, parties hereto; any sale, conveyance, or assignment of the railway and property hereinabove described, made under this decree, shall not have the effect of discharging any part of said property from the payment or contribution to the payment of claims or demands chargeable against the same, whether for costs and expenses, the expenses of the receivership of
404 said property, and the full payment of all the debts and liabilities of the receivers of the Wabash, St. Louis & Pacific Railway Company, namely, Solon Humphreys and Thomas E. Tutt, Thomas M. Cooley, and Gen. John McNulta, or upon intervening claims allowed or to be allowed or upon any other claims or allowances that have been or may hereafter be charged against the property of the Wabash, St. Louis & Pacific Railway Company or any part thereof or said receivers or either of them or the adjustment of any equities arising out of the same between the parties hereto or their successors either by this court or by the circuit court of the United States for the eastern district of Missouri or by any United States circuit court exercising either original or ancillary jurisdiction over said property of the Wabash, St. Louis and Pacific Railway Company or any part thereof or by any United States circuit court to which any of the parties in the consolidated cause of the Central Trust Company of New York and others against the Wabash, St. Louis and Pacific Railway Company and others in the circuit court of the United States for the eastern district of Missouri, including the receivers, have been by said circuit court of the United States remitted in proceedings or actions ancillary to the jurisdiction of said last-named court or otherwise.

"Nor shall any such sale, conveyance, transfer, or assignment made under and pursuant to this decree withdraw any of said railroad property or interests to be sold under this decree as hereinbefore directed from the jurisdiction of this and the other courts aforesaid, but the same shall remain in custody of the receiver until such time as the court shall on motion direct said property in whole or from time to time in part to be released to the purchaser or purchasers thereof or any of them, and shall afterwards be subject to be retaken and if necessary resold if the sum so charged or
405 be charged against said property or any part thereof or said receivers as aforesaid shall not be paid within a reasonable time after being required by order of this or said other courts. The conveyance and transfer of said property sold under this de-

cree shall be subject to the powers and jurisdiction of said courts and the purchasers of the property sold under this decree or any part thereof, and the parties hereto or their successors shall thereby become and remain subject to said jurisdiction of said courts so far as necessary to the enforcement of this provision of this decree, and such jurisdiction shall continue until all the claims and demands that have been or may be allowed against said property of the Wabash, St. Louis & Pacific Railway Company or any part thereof or said receivers by order of said courts shall be fully paid and discharged. The provisions aforesaid shall apply to the purchasers of the — under this decree and all persons taking said property through or under them, but the foregoing provisions shall not nor shall any reservation in this decree contained have the effect to be construed, nor are they or any of them intended to give to any claims that may exist any validity, character, or status superior to what they now have nor to decide nor imply that any such claims exist."

This defendant says that, as provided in said decree, the claim of James Compton to a lien upon a portion of said line of railway is still pending and undetermines in said Federal courts and has been referred to Hon. Bluford Wilson, master in chancery, to take the testimony and report upon the question of the existence and amount of his claimed lien.

The defendant says further that there is also pending and undetermined in said Federal courts claims for expenses in conducting the said foreclosures, and the questions relating thereto have
406 been *have been* duly referred to Hon. William P. Fishback, master in chancery, to take the testimony and report with all convenient speed the testimony relating thereto, and said cause is still pending and undetermined before said master and he has not yet reported upon the said questions. The Wabash Railway Company therefore avers the fact to be that the said United States court is still in such possession and control of said property *as that* the exclusive jurisdiction to hear and determine all questions relating to liens upon said lines of railway described in the cross-petition of said Henry F. James, William P. Redmond, and others and the petition filed in this cause. Wherefore it asks to be dismissed with its costs.

DILLON & SWAYNE,
*Attorneys for the Wabash Railroad Company.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Rush Taggart, being duly sworn, says he is one of the attorneys for the Wabash Railroad Company; that he has read the foregoing answer and knows the contents thereof, and believes the same to be true; that the defendant is a non-resident of Lucas county and now absent therefrom, and that on that account this verification is made by affiant as attorney.

RUSH TAGGART.

Sworn to before me this 2nd day of June, 1890.
[SEAL.] THOMAS E. FELL,
*Notary Public, Kings Co., N. Y.*

Certificate filed in New York Co.

On the 9th day of December, 1890, there was filed in said court a certified copy of order of removal to the United States circuit court in said cause; which mandate is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, } ss:
*Northern District of Ohio, Western Division,* }

407 At a stated term of the circuit court of the United States within and for the western division of the northern district of Ohio begun and held at the city of Toledo, in said district, on the first Tuesday in December, being the second day of said month, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fifteenth—present, the Honorable Augustus J. Ricks, district judge—among the proceedings then and there had were the following, to wit:

WEDNESDAY, *Dec. 3rd.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY *et al.* } No. 988.

It appearing to the court, from the affidavits thereto attached, that from prejudice or local influence Solon Humphreys, Daniel A. Lindley, and James F. Joy will not be able to obtain justice in the court of common pleas of Lucas county, Ohio, or in any other State court to which the said petitioners would or could under the laws of the State of Ohio have the right on account of such prejudice or local influence to remove this cause, and that they are therefore entitled to have the removal which they seek, it is accordingly ordered that this cause be, and the same is hereby, removed from the said court of common pleas of Lucas county to this court, and that notice of this order be served upon said court of common pleas of Lucas county, Ohio, and that said court and clerk thereof be and are requested to furnish, upon application of petitioners and the payment of the lawful fees therefor, a copy of the record on file in said court in this cause to be filed in this court.

408 THE UNITED STATES OF AMERICA, } ss:
*Northern District of Ohio, Western Division,* }

I, Martin W. Sanders, clerk of the circuit court of the United States within and for said district, do hereby certify that the within is a true copy of an order entered upon the journal of the proceed-

ings of said court in the therein-entitled cause; that I have compared the same with the original entry of said order, and it is a true transcript therefrom of the whole thereof.

Witness my official signature and the seal of the said court, at Toledo, in said district, this ninth day of December, A. D. 1890, and in the 115th year of the Independence of the United States of America.

[SEAL.]

MARTIN W. SANDERS, *Clerk*,
By HALLIE W. BROWN, *Deputy Clerk*.
B. F. WADE, *U. S. Marshal*,
By HENRY MORRISON, *Deputy*.

THE STATE OF OHIO, } ss:
*Lucas County*, }

I, J. P. Bronson, clerk of the court of common pleas within and for said county, and in whose custody the files, pleadings, journals, execution dockets, and seals of said court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records of the proceedings of the court of common pleas within and for said county, and that said foregoing copy has been compared by me with the original record, and that the same is a correct transcript therefrom.

In testimony whereof I do hereunto subscribe my name officially and affix the seal of said court, at the court-house, in the [SEAL.] city of Toledo, in said county, this 15th day of January, A. D. 1891.

J. P. BRONSON, *Clerk*.

409 *Total Costs.*

| | |
|---|---|
| Clerk's costs | $327 76 |
| Sheriff's " | 9 14 |
| Notary | 12 40 |
| Printer, p'd by def't | 50 40 |
| Adv. by def't | 11 89 |
| | $411 59 |

410 Afterwards, to wit, on the 14th day of May, A. D. 1891, there was filed in the clerk's office of said court the following motion to remand, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY } *vs.* THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY and Others. }

Now come Mary L. Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A.

Wittke, Benjamin F. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, a survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bisop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners; also Dr. W. P. Rowe and T. E. Stephens, executors of Jane A. Sullivan, deceased, and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, and each and every one of the aforesaid, by George Hoadly and John C. F. Gardner, their solicitors, and, upon the petition heretofore filed in this cause by James F. Joy and by Solon Humphreys and Daniel A. Lindley praying for order for the removal of this cause from the court of common
411 pleas of Lucas county, Ohio, to this court and upon the record thereof, whereof a copy has been duly filed in this court, and upon the affidavits of John C. F. Gardner and William F. Redmond, filed with this motion, move in the alternative, so far as the same concerns and relates to said moving parties hereinbefore named, to remand this cause to the court of common pleas of Lucas county, Ohio, for further proceedings therein according to the established course of judicial proceedings in the State courts of Ohio for the following reasons, to wit:

First. Said petitions and each of them show upon their face that this court was without jurisdiction to hear and determine the same, and that the order made thereon for the removal of said cause was made without jurisdiction, and that the transcript of the record in said cause filed in this court was filed without jurisdiction of this court to hear and determine the controversy between the said parties.

Second. Because the decree rendered by the supreme court of Ohio, referred to and described in each of said petitions, viz., of said James F. Joy and of said Humphreys and Lindley, does not and cannot in law constitute prejudice or local influence so as to prevent the said Joy and the said Humphreys and Lindley or either of them from being able to obtain justice in the said court of common pleas of Lucas county, Ohio, or in any other State court to which they or either of them might under the laws of the State of Ohio have the right to remove said cause.

Third. Because in fact there exists no such prejudice or local influence in the court of common pleas of the county of Lucas, or in the county of Lucas, or in any other State court or county to which the said Joy or the said Humphreys and Lindley might, under the laws of the State of Ohio, have the right to remove this cause to prevent them from obtaining justice in said State court or courts.

412 Fourth. Because, at the time of filing the cross-petition in her behalf, Mary L. Oliveira was an alien and not a citizen of

any of the States of the United States of America, but was a resident and citizen of the Kingdom of Portugal.

Fifth. Because, at the time of the filing of the cross-petition in her behalf, Jane A. Sullivan was and her executors, Dr. W. P. Rowe and T. E. Stephens, are aliens and not residents, nor was nor is any of them a resident of any of the States of the United States of America, but the said Jane A. Sullivan was and the said Rowe and Stephens are citizens and residents of the United Kingdom of Great Britain and Ireland.

Sixth. Because, at the time of the filing of the cross-petition in his behalf, James Walker aforesaid was, ever since has been, and is now a citizen and resident of the State of Michigan, being the same State whereof the said James F. Joy was, at the date aforesaid, ever since has been, and still is a citizen and resident.

Seventh. Because the plaintiff and Israel M. Simon, another of the cross-petitioners, were and each of them was the said plaintiff at the time of filing the petition, and said Simon at the time of filing the cross-petition in his behalf, ever since has been, and still is the plaintiff, a corporation duly organized under the laws of the State of Ohio, and the said Simon a citizen and resident of the State of Ohio, of the same State, according to the laws of which the said several defendant corporations described in the said record and made defendants to said petition and cross-petitions by proper process were and each of them is duly organized according to law.

Eighth. Because John W. Alling, another of said cross-
413 petitioners, was, at the time of filing the said cross-petition in his behalf, ever since has been, and now is a citizen and resident of the State of Connecticut, being the same State whereof Edgar T. Welles, who is associated with the said Joy, Humphreys, and Lindley as a co-defendant to the cross-petition of the said Alling, was, at the date aforesaid, ever since has been, and still is a citizen and resident.

Ninth. Because William F. Redmond, Henry W. Smith, John S. A. Wittke, and Benjamin F. Ham, others of said cross-petitioners, were and each of them was at the time of filing the said cross-petitions in his behalf, ever since have been, and still are citizens and residents of the State of New Jersey, being the same State whereof the said Solon Humphreys, one of said petitioners for removal, was at the date aforesaid, ever since has been, and still is a resident.

Tenth. Because Vassar Brothers Hospital, another of said cross-petitioners, was at the time of filing the said cross-petition in its behalf, ever since has been, and still is a corporation duly organized under the laws of the State of New York and a citizen of said State, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen and resident.

Eleventh. Because Preston Wing, another of said cross-petitioners, was at the date of filing the said cross-petition in his behalf and because Sheldon Wing and William H. Sheldon, the executors of his last will and testament, are and each of them is a citizen and resident of the State of New York, being the same State whereof the said

Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen.

Twetfth. Because Gustavus Rollins, survivor of Edward A.
414 Rollins, late partners, and the said Edward A. Rollins in his lifetime were and each of them was at the time of filing of said cross-petitions in their behalf and the said Gustavus Rollins ever since has been and still is a citizen and resident of the State of New York, whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a resident and citizen.

Thirteenth. Because Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead, William C. Creamer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward H. Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co., were and each of them was, at the time of the filing of said cross-petitioners in their behalf respectively, and each of them ever since has been and still is a citizen and resident of the State of New York, being the same State whereof the said Daniel A. Lindley was, at the date aforesaid, ever since has been, and still is a citizen and resident aforesaid.

Dated Toledo, Ohio, May 11, 1891.

GEO. HOADLY,
JOHN C. F. GARDNER,
*Solicitors for Cross-Petitioners Named Above.*

Afterwards, to wit, on the 14th day of May, A. D. 1891, there was filed in the clerk's office of said court the following affidavits and notice of motion to remand, &c., to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

415 THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY and Others.

To Messrs. Dillon & Swayne, attorneys for James F. Joy, and Henry Crawford, Esq., attorneys for Solon Humphreys and Daniel A. Lindley.

GENTLEMEN: You are hereby notified that on Tuesday, the 2nd day of June, 1891, at the court-room of the circuit court of the United States, in the city of Toledo, Lucas county, Ohio, upon the opening of the said circuit court for the western division of the northern district of Ohio, the undersigned, as solicitors for the cross-petitioners Mary L. Oliviera, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin F. Ham, E. Kellog Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, survivor of Edward A. Rollins, de-

ceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters; George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners; also for Dr. W. P. Rowe and T. E. Stephens, executors of Jane A. Sullivan, deceased, and for Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, and for each and every one
416 of the aforesaid will, upon the petitions heretofore filed in this court by James F. Joy, signed by Dillon & Swayne, as his attorneys, and verified by the said Joy on the 23rd day of April, 1890, and upon the petition of Solon Humphreys and Daniel A. Lindley, signed by Henry Crawford, as their attorney, and verified by the said petitioners on the 27th day of June, 1890, and upon the affidavit of Solon Humphreys verified on the 30th day of June, 1890, which petitions were presented to this court on the 3rd day of December, 1890, and upon the order of this court made thereon the said 3rd day of December, 1890, for ordering the removal of this cause from the court of common pleas of Lucas county, Ohio, to this court, and upon the record in this suit, whereof a copy has been duly filed in this court, and upon the affidavits of John C. F. Gardner and William F. Redmond, duly verified by them respectively, and copies of each of which are hereto attached and which will be filed with said motion in said court on or before said day, apply to said court to remand said cause in the alternative, so far as the same concerns and relates to each one of the said moving parties hereinbefore named, to the court of common pleas of Lucas county, Ohio, for further proceedings therein, according to the established course of judicial proceedings in the State courts of the State of Ohio for the following reason, to wit:

First. Said petitions and each of them show upon their face that this court was without jurisdiction to hear and determine the same, and that the order made thereon for the removal of said cause was made without jurisdiction, and that the transcript of the record in said cause filed in this court was filed without jurisdiction of this court to hear and determine the controversy between the said parties.

417 Second. Because the decree rendered by the supreme court of Ohio referred to and described in each of said petitions, viz., of said James F. Joy and of said Humphreys and Lindley, does not and cannot in law constitute prejudice or local influence so as to prevent the said Joy and the said Humphreys and Lindley or either of them from being able to obtain justice in the said court of common pleas of Lucas county, Ohio, or in any others State court to which they or either of them might under the laws of the State of Ohio have the right to remove said cause.

Third. Because in fact there exists no such prejudice or local influence in the court of common pleas of the county of Lucas or in the county of Lucas or in any other State court or county to which the said Joy or the said Humphreys and Lindley might under the

laws of the State of Ohio have the right to remove this cause to prevent them from obtaining justice in said State court or courts.

Fourth. Because at the time of filing the cross-petition in her behalf Mary L. Oliviera was an alien and not a citizen of any of the States of the United States of America, but was a citizen and resident of the Kingdom of Portugal.

Fifth. Because at the time of the filing of the cross-petition in her behalf Jane A. Sullivan was and her executors, Dr. W. P. Rowe and T. E. Stephens, are aliens and not residents, nor was nor is any of them a resident of any of the States of the United States of America, but the said Jane A. Sullivan was and the said Rowe and Stephens are citizens and residents of the United Kingdom of Great Britain and Ireland.

Sixth. Because at the time of the filing of the cross-petition in his behalf James Walker aforesaid was, ever since has been,
418 and is now a citizen and resident of the State of Michigan, being the same State whereof the said James F. Joy was at the date aforesaid, ever since has been, and still is a citizen and a resident.

Seventh. Because the plaintiff and Israel M. Simon, another of said cross-petitioners, were and each of them was, the said plaintiff at the time of filing this petition and said Simon at the time of filing the cross-petition in his behalf, ever since has been, and still is—the plaintiff a corporation duly organized under the laws of the State of Ohio and the said Simon a citizen and resident of the State of Ohio—of the same State, according to the laws of which the several defendant corporations described in the said record and made defendants to said petition and cross-petitions by proper process were and each of them is duly organized according to law.

Eighth. Because John W. Alling, another of said cross-petitioners, was at the time of filing the said cross-petition in his behalf, ever since has been, and now is a citizen and resident of the State of Connecticut, being the same State whereof Edgar T. Welles, who is associated with the said Joy, Humphreys, and Lindley as codefendants to the said cross-petition of the said Alling and others, was at the date aforesaid, ever since has been, and still is a citizen and resident.

Ninth. Because William F. Redmond, Henry W. Smith, John S. A. Wittke, and Benjamin F. Ham, others of said cross-petitioners, were and each of them was at the time of filing the said cross-petitions in their behalf, ever since have been, and still are citizens and residents of the State of New Jersey, being the same State whereof the said Solon Humphreys, one of said petitioners for removal, was at the date aforesaid, ever since has been, and still is a resident.
419 Tenth. Because Vassar Brothers' Hospital, another of said cross-petitioners, was at the time of filing the said cross-petition in its behalf, ever since has been, and still is a corporation duly organized under the laws of the State of New York and a citizen of said State, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen and resident.

Eleventh. Because Preston Wing, another of said cross-petitioners, was at the date of filing the said cross-petition in his behalf and because Sheldon Wing and William H. Sheldon, the executors of his last will and testament, are and each of them is a citizen and resident of the State of New York, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen.

Twelfth. Because Gustavus Rollins, survivor of Edward A. Rollins, late partners, and the said Edward Rollins in his lifetime were and each of them was at the time of the filing of said cross-petitions on their behalf and the said Gustavus Rollins ever since has been and still is a citizen and resident of the State of New York, whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a resident and citizen.

Thirteenth. Because Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper & Co., were and each of them
420 was at the time of the filing of said cross-petition in their behalf, respectively, and each of them ever since has been and still is a citizen and resident of the State of New York, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen and resident aforesaid.

Dated Toledo, Ohio, May 11, 1891.

GEORGE HOADLY,
JOHN C. F. GARDNER,
*Solicitors for Cross-Petitioners Named Above.*

In the Circuit Court of the United States for the Northern District —, Western Division.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY and Others.

THE STATE OF NEW YORK,
*City and County of New York,* } *ss:*

John C. F. Gardner, being duly sworn, says that he is one of the solicitors for the cross-petitioners in this case, and that he is familiar with the said cross-petitioners and with their several places of residences and citizenship, and that Mary L. Oliviera, one of the cross-petitioners at the time of the filing of here cross-petition, was, ever since has been, and still is a citizen and resident of the Kingdom of Portugal, at present residing in the city of Funchal, in the
421 Island of Madeira, and that Jane A. Sullivan, another of said cross-petitioners, was at the time of the filing of her

cross-petition and during the residue of her life was a citizen and resident of the United Kingdom of Great Britain and Ireland and resided in the city of Liverpool, in the Kingdom of England; that since the filing of the cross-petition in her behalf she has departed this life leaving a last will and testament, which has been duly admitted to probate, and letters testamentary issued thereon to two executors, who are citizens and residents of the United Kingdom of Great Britain and Ireland, viz., Dr. W. P. Rowe, who is a resident of the city of Liverpool, and T. E. Stephens, who is a resident of the city of London, in the Kingdom of England.

That affiant and his associate, George Hoadly, are authorized to appear for said executors and to cause the revivor of said cross-petition so filed in behalf of the said Jane A. Sullivan in the names of said executors, but that owing to the removal of this cause and the consequent uncertainty as to where the said cause is properly to be prosecuted said revivor has not yet been made.

Affiant further states that James Walker, one of the said cross-petitioners, was at the time of filing his cross-petition, ever since has been, and still is a citizen and resident of the State of Michigan; that Israel M. Simon, another of said cross-petitioners, was at the time of filing the said cross-petition, ever since has been, and still is a citizen and resident of the State of Ohio; that John W. Alling, another of said cross-petitioners, was at the time of filing his said cross-petition, ever since has been, and now is a citizen and resident of the State of Connecticut; that William F. Redmond, Henry W. Smith, John S. A. Wittke, and Benjamin F. Ham were and each of them was at the time of filing their said cross-petitions, ever since has been, and still is a resident of the State of New Jersey; that E. Kellogg Beach, another of said cross-petitioners, was at the time of the filing of the said cross-petition, ever since has been, and still is a citizen and resident of the State of Illinois; that Ella R. Johnson and Josephine L. Cadmus, two of said cross-petitioners, were at the time of the filing of their said cross-petitions, ever since have been, and still are citizens and residents of the State of Pennsylvania; that Irving R. Ferry, another of said cross-petitioners, was at the time of the filing of his said cross-petition, ever since has been, and still is a citizen and resident of the State of Massachusetts, and that Vassar Brothers' Hospital, another of said cross-petitioners, was at the time of filing its said cross-petition a corporation under the laws of the State of New York and a citizen of the said State; that Preston Wing, another of said cross-petitioners, was at the time of filing his said cross-petition and has been a citizen and resident of the State of New York, but that he has since departed this life leaving a last will and testament, which has been duly admitted to probate, and whereon letters testamentary have been issued to Sheldon Wing and William A. Sheldon, his executors, who are citizens and residents of the State of New York, who have not yet been made parties to this cause for the reasons aforesaid stated with regard to the case of Jane Sullivan; that Gustavus Rollins, another of said cross-petitioners, was at the time of filing his cross-petition a citizen of the State of New York,

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and has since departed this life, leaving Edward A. Rollins as his surviving partner, and that the said Edward A. Rollins was at the time of filing of said cross-petition, ever since has been, and still is a citizen and resident of the State of New York, and that the
423 other cross-petitioners, to wit, Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners, were and each of them was at the time of the filing of said cross-petitions by them respectively citizens and residents and each of them ever since has been and still is a resident and citizen of the State of New York.

And further affiant saith not.

JOHN C. F. GARDNER.

Subscribed and sworn to before me this 9th day of May, 1891.

[SEAL.] A. J. McCORMACK,
*Notary Public, N. Y. County.*

In the Circuit Court of the United States for the Northern District —, Western Division.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY and Others.

STATE OF NEW YORK,
*City and County of New York,* } *ss:*

William F. Redmond, being duly sworn, deposes and says that he is one of the cross-petitioners in the above-entitled action, and that it is not true that there exists or ever has existed in the court of common pleas of Lucas county, Ohio, or in the county of Lucas, Ohio, or in any other county in the State of Ohio, and preju-
424 dice or local influence tending to prevent James F. Joy, Solon Humphreys, and Daniel A. Lindley, or either of them, parties defendant in said action, from obtaining justice in said court of common pleas of said Lucas county or in any other State court in the State of Ohio, but, on the contrary, there is no court of common pleas of any other court in the State of Ohio wherein by reason of such prejudice or local influence said parties will be unable to obtain justice.

Affiant further states that the only ground or pretense for the claim that such prejudice or local influence exists is the fact that the majority of the judges of the supreme court of Ohio in the case of James Compton *vs.* Railway Company, reported in the 45th volume of the Ohio State Reports, at page 592 and the succeeding pages, decided and entered judgment accordingly that the said Compton, as a holder of equipment bonds issued by the Toledo and Wabash

Railway Company, had acquired and owns a lien upon the Toledo and Wabash railway within the State of Ohio, in which property the said Joy, Humphreys, and Lindley claim to have once had an interest, and by reason of which interest they have been made defendants to the cross-petitions filed in this cause by affiant and others; and further saith not.

WILLIAM F. REDMOND.

Subscribed in my presence and sworn to before me this 9th day of May, 1891.

[SEAL.] A. J. McCORMACK,
*Notary Public, N. Y. County.*

Afterwards, to wit, on the 29th day of May, A. D. 1891, there was filed in the clerk's office of said circuit court the following motion to remand, to wit:

425 In the Circuit Court of the United States for the Northern District —, Western Division.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY and Others.

Now comes the Adelbert College of the Western Reserve University, the plaintiff in this action, by Lee and Brown, its attorneys, and upon the petition heretofore filed in this cause by James F. Joy and by Solon Humphreys and Daniel A. Kindley, praying for order for the removal of this cause from the court of common pleas of Lucas county, Ohio, to this court and upon the record thereof, whereof a copy has been duly filed in this court, and upon the affidavits of John C. F. Gardner and William F. Redmond, filed with this motion, move in the alternative, so far as the same concerns and relates to said moving parties hereinbefore named, to remand this cause to the court of common pleas of Lucas county, Ohio, for further proceedings therein according to the established course of judicial proceedings in the State courts of Ohio for the following reasons, to wit:

First. Said petitions and each of them show upon their face that this court was without jurisdiction to hear and determine the same, and that the order made thereon for the removal of said cause was made without jurisdiction, and that the transcript of the record of the said cause filed in this court was filed without jurisdiction of this court to hear and determine the controversy between the said parties.

Second. Because the decree rendered by the supreme court
426 of Ohio referred to in each of the said petitions, viz, of said James F. Joy and of said Humphreys and Lindley, does not and cannot in law constitute prejudice or local influence so as to prevent the said Joy and the said Humphreys and Lindley, or

either of them, from being able to obtain justice in the said court of common pleas of Lucas county, Ohio, or in any other State court to which they or either of them might under the laws of the State of Ohio have the right to remove said cause.

Third. Because in fact there exists no such prejudice or local influence in the court of common pleas of the county of Lucas or in the county of Lucas or in any other State court or county to which the said Joy or the said Humphreys and Lindley might, under the laws of the State of Ohio, have the right to remove this cause to prevent them from obtaining justice in said State court or courts.

Fourth. Because at the time of the filing the cross-petition in her behalf Mary L. Oliveira was an alien and not a citizen of any of the States of the United States of America, but was a citizen and resident of the Kingdom of Portugal.

Fifth. Because at the time of the filing of the cross-petition in her behalf Jane A. Sullivan was and her executors, Dr. W. P. Rowe and T. E. Stephens, are aliens and not residents nor is nor was any of them a resident of any of the States of the United States of America, but the said Jane A. Sullivan was and the said Rowe and Stephens are citizens of Great Britain and Ireland.

Sixth. Because at the time of the filing of the cross-petition in his behalf James Walker aforesaid was, ever since has been, and is now a citizen and resident of the State of Michigan, being the same State whereof the said James F. Joy was at the date
427 aforesaid, ever since has been, and still is a citizen and resident.

Seventh. Because the plaintiff and Israel M. Simon, another of the cross-petitioners, were and each of them was—the said plaintiff at the time of filing of the petition and said Simon at the time of the filing the cross-petition in his behalf—ever since has been, and still is the plaintiff, a corporation duly organized under the laws of the State of Ohio, and the said Simon a citizen and resident of the State of Ohio, of the same State, according to the laws of which the several defendant corporations described in the said record and made defendants to said petition and cross-petitions by proper process were and each of them is duly organized according to law.

Eighth. Because John W. Alling, another of said cross-petitioners, was at the time of filing of said cross-petition in his behalf, ever since has been, and now is a citizen and resident of the State of Connecticut, being the same State whereof Edgar T. Welles, who is associated with the said Joy, Humphreys, and Lindley as codefendant to the said cross-petition of the said Alling and others, was at the date aforesaid, ever since has been, and still is a citizen and resident.

Ninth. Because William F. Redmond, Henry W. Smith, John S. Wittke, and Benjamin F. Ham, others of said cross-petitioners, were and each of them was at the time of filing the said cross-petitions in his behalf, ever since has been, and still are citizens and residents of the State of New Jersey, being the same State whereof the said Solon Humphreys, one of the said petitioners for removal, was at the date aforesaid, ever since has been, and still is a resident.

Tenth. Because Vassar Brothers Hospital, another of said
428 cross-petitioners, was at the time of the filing of the said cross-petition in its behalf, ever since has been, and still is a corporation duly organized under the laws of the State of New York and a citizen in said State, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen and resident.

Eleventh. Because Preston Wing, another of said cross-petitioners, was at the date of filing the said cross-petition in his behalf, and because Sheldon Wing and William H. Sheldon, the executors of his last will and testament, are and each of them is a citizen of the State of New York, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen.

Twelfth. Because Gustavus Rollins, survivor of Edward A. Rollins, late partners, and the said Edward A. Rollins in his lifetime were and each of them was at the time of the filing of said cross-petition in their behalf, and the said Gustavus Rollins ever since has been and still is a citizen and resident of the State of New York, whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a resident and citizen.

Thirteenth. Because Henry F. James, Clarence Morfit, Charles G. Peters; George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward H. Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners under the firm name of Kohn, Popper and Co., were and each of them was at the time of filing of said cross-petitions in their behalf respectively and each of them ever since has been and still is
429 a citizen and resident of the State of New York, being the same State whereof the said Daniel A. Lindley was at the date aforesaid, ever since has been, and still is a citizen and resident — aforesaid.

Dated Toledo, Ohio, May 29th, 1891.

LEE & BROWN,
*Attorneys for Adelbert College.*

Afterwards, to wit, on the 2nd day of June, A. D. 1891, there was duly entered on the journal of said court the following order for cause to be submitted on briefs to circuit judge, to wit:

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY and Others. } No. 988.

Now comes the plaintiff, The Adelbert College of the Western Reserve University, and William F. Redmond and others, cross-petitioners, who have filed their motions to remand this cause to

the court of common pleas of Lucas county, there to be proceeded with according to law.

And for good cause shown, and by consent of counsel, it is ordered that said cause be submitted on briefs to be filed on or before July 1 to the consideration of the circuit judge, and counsel for said cross-petitioners file their briefs accordingly.

AUGUSTUS J. RICKS,
*District Judge, &c.*

430 Afterwards, to wit, on the 14th day of September, A. D. 1890, there was filed in the clerk's office of said court the following opinion of Judge Jackson, to wit:

United States Circuit Court for the Northern District of Ohio, Western Division. In Equity.

THE ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY, The Wabash Railway Company, The Wabash, St. Louis and Pacific Railway Company, James R. Jesup and Isaac H. Knox as Trustees, George I. Seney as Trustee, Solon Humphreys and David A. Lindley as Trustees. } No. 988.

Pending on motion to remand to State court for want of jurisdiction in this court to hear and determine the controversy between the parties.

In April, 1883, the Adelbert college, an Ohio corporation, commenced this suit in the court of common pleas of Lucas county, Ohio, against the above-named defendants upon two bonds of $500 each, with coupons attached, issued in 1862 by the Toledo and Wabash Railway Company and styled "equipment bonds," of which there was a total issue of $600,000. The defendant companies are corporations and citizens of Ohio, Indiana, Illinois, and Missouri, which have successively acquired by consolidations and foreclosure of mortgages the ownership of the properties of the said Toledo & Wabash Railway Company. The individual defendants are
431 trustees under mortgages executed by the two first-named defendant companies. The plaintiff by its suit seeks to have a lien declared upon the property, etc., that was of the Toledo and Wabash Railway Company and now owned by its successors in title, and to subject the same to the payment of its said bonds.

The succession in title and ownership to the properties sought to be charged, the several mortgages made before and since 1862 by the different companies down to the acquisition thereof by the Wabash, St. Louis & Pacific Railway Company, and the relief sought are the same as set forth in the cases of Compton *vs.* Railway Company, 45 Ohio State Reports, 592, and of Wabash, St. Louis & Pacific Railway Company *vs.* Ham *et al.*, 114 U. S., pages 587–598.

In the latter case the Supreme Court of the United States held that said "equipment bonds" constituted no lien upon the property, franchises, etc., which the defendant companies had acquired or derived through or from the Toledo & Wabash Railway Company. In the case of Compton *vs.* railway company the supreme court of Ohio on precisely the same question and same state of facts subsequently reached a different conclusion and sustained the lien which plaintiff is seeking to enforce. Pending this Compton suit the plaintiff and other holders of "equipment bonds" sought to have themselves made parties thereto, but this was denied by the State court on the grounds that said Compton's action was for his sole benefit. Thereupon the plaintiff instituted the present suit, which from the prayer of the original petition seems to have been intended for its sole benefit. On the 24th of November, 1883, the Wabash, St. Louis & Pacific Railway Company amended the petition, setting up various matters of defence, including the judgment of the supreme court of
432 the United States in the Ham case and denying the lien claimed for the "equipment bonds." On the 21st of May, 1888, said Wabash, St. Louis & Pacific Railway Company filed an amended answer setting up other matters of defense, amongst which was the fact that under foreclosure proceedings commenced in 1884 by trustees of mortgages executed by said railway company the circuit court of the United States for the northern district of Ohio and district of Indiana had appointed receivers of its properties, etc., who were still in possession thereof; that subsequently the trustees of mortgages prior in date and lien to the said "equipment bonds" had commenced foreclosure proceedings in the circuit courts of the United States for the proper districts, and that said courts were proceeding to foreclose such prior mortgages, having by their receivers and the said suits exclusive jurisdiction over the property which plaintiff sought to have charged, and that plaintiff should be remitted to said circuit courts for the determination and enforcement of its said claim.

On December 27th, 1888, the plaintiff filed its amended and supplemental petition making James Compton, who had in the meantime obtained a decree in the supreme court of Ohio establishing the lien of his "equipment bonds," a party defendant and claiming that he had no priority of payment and asking that the proceeds of the property directed to be sold to satisfy his judgment should be distributed to plaintiff "concurrantly and coequally with said Compton, and, if necessary, to consolidate said causes and make full inquiry and finding as to any and all liens upon said railway property and the proceeds to arise from the sale of the same," to the end that said railway property when it shall be sold shall pass free and clear of all incumbrances to the purchaser thereof with
433 the view of making the same bring the largest possible price at such sale.

At this stage of the proceedings in the plaintiff's suit William F. Redmond and various others appeared, and on January 4th, 1889, made application to said State court to be made parties defendant

therein, with leave to file answer and cross-petition, and, the plaintiff consenting thereto, the court granted this application, ordered said applicants to be admitted as parties defendant, with leave as such "to file answer and cross-petition herein for the benefit of themselves alone or also for the benefit of other persons and corporations who may not have joined them in making such application, and to have and enjoy all the rights, privileges, and benefits of parties defendant herein." Said Redmond and others accordingly, on January 5th, 1889, filed their answer and cross-petition in said cause, setting forth that they were holders of a large number of said "equipment bonds," admitting all the allegations of the original and amended petitions except the admission that certain mortgages prior in date to said bonds constituted a superior lien on the property sought to be charged with the payment of their claims. By their cross-petitions, after stating their respective holdings of said "equipment bonds," they allege that there are a large number of other bonds of the same class and issue still outstanding in the hands of sundry persons, partnerships, and corporations unknown to them, in whose behalf, if they will appear and join in the cross-petition, as well as on their own behalf, the petitioners file said cross-petition. They repeat the allegations of the original petition relating to the consolidation in 1865 of the Toledo and Wabash Railway Company with other railroad companies forming the Toledo, Wabash and Western Railway Company; the mortgages made by
434 the latter in 1867 and 1873 to James R. Jesup and Isaac H. Knox, as trustees, to secure issues of its bonds for $15,000,000 and $5,000,000 respectively; the foreclosure in 1875 of the 1873 mortgage for $5,000,000; the sale of its property, rights, and franchises thereunder and the purchase thereof by John W. Ellis and others as a purchasing committee; the formation of the Wabash Railway Company and conveyance to it by said purchasing committee of the entire line of railway, with its equipment, rights, properties, and franchises; the execution on 1877 by said Wabash Railway Company of its mortgages upon said properties to George I. Seney, trustee, and in 1879 a further mortgage to Solon Humphreys and Daniel A. Lindley, trustees; the consolidation of said Wabash Railway Company with the St. Louis, Kansas City and Northern Railway Company, a Missouri corporation, forming the Wabash, St. Louis & Pacific Railway Company; the execution of the latter of its mortgage to the Central Trust Company of New York and James Cheney, of Indiana, to secure a large issue of consolidated bonds; the proceedings instituted by said Wabash, St. Louis and Pacific Railway Company and said trustees in 1884 to foreclose said mortgage in the United States circuit courts of Ohio, Indiana, Illinois, and Missouri; the sale of its road, franchises, etc., in 1886 and the purchase thereof by and conveyance to James F. Joy, of Michigan; Ossian D. Ashley and Thomas H. Hubbard, of New York, and Edgar T. Wells, of Connecticut, as a purchasing committee under a certain plan of reorganization entered into by a majority of bondholders of said railway company, all which consolidations, mortgages, and foreclosure proceedings,

it is alleged, in no way affected the lien of said equipment bonds upon the properties of the said Toledo and Wabash Railway Company to which the said several companies and their trustees under mortgages succeeded. It is further
435 shown in said cross-petition that the said Toledo and Wabash Railway Company, which issued said "equipment bonds," was a consolidated corporation; that its constituent divisions had issued bonds secured by mortgages executed prior to the issue of said "equipment bonds," one of said mortgages being made by the Toledo and Illinois Railway Company in 1853 to the Farmers' Loan and Trust Company, a New York corporation, as trustee, to secure bonds of said railway company to the amount of $900,000; that another of said constituent devisions, the old Toledo & Wabash Railway Company, before the consolidation which formed the Toledo and Wabash Railway Company, had in October, 1858, executed a mortgage upon its line of road, property, franchises, etc., to Edwin D. Morgan, as trustee, to secure its mortgage bonds to the amount of $1,000,000; that, said Morgan having died before the execution of said trust, James F. Joy, of Detroit, Michigan, was appointed trustee in his place. The cross-petition alleged that said two mortgages were not valid incumbrances upon the property of the Toledo & Wabash Railway Company, consolidated, which issued said "equipment bonds," and constituted no prior lien to the same. In addition to the parties named as defendants in plaintiff's original and first supplemental and amended petitions, the cross-petitioners made the Farmers' Loan and Trust Company, a corporation of New York, as trustee, the Central Trust Company of New York, and James Cheney, of Indiana, as trustees, James F. Joy, of Michigan, as trustee, parties defendant, and its prayer for relief was that said "equipment bonds" and unpaid interest warrants thereto attached might be held and declared a first and prior lien and incumbrance upon all said railway premises, properties, and franchises for the benefit of all holders of said bonds, and that they be first paid out of the proceeds arising from the sale of said properties, which the court was asked to decree.

436 Cross-petitioners claiming that this proceeding came within the provision of section 5048, R. S. of Ohio, publication was asked for and had under the provisions of sections 5022 and 5044 of said Revised Statutes for all non-resident defendants. Humphreys and Lindley, as trustees, appeared and demurred to the petition. On March 16th, 1889, James J. F. Joy, as trustee, filed his answer, setting up said mortgage of October, 1858; and, further, that subsequenty to the suit of the Central Trust Company against the Wabash, St. Louis and Pacific Railway Company, referred to in the previous pleadings, Thomas Atkins and others, holders of bonds issued by the Toledo, Wabash & Western Railway Company and by the Wabash Railway Company under the consolidated mortgages of 1867 and 1879, had filed their bill in the United States circuit courts for Ohio, Indiana, and Illinois for the foreclosure of said mortgage; that all trustees and prior divisional mortgagees were made parties thereto; that said trustees under such prior divisional

mortgages, including himself as trustee under the mortgage of October, 1858, had brought separate suits in said courts to foreclose their respective mortgages; that all of said suits were, in 1889, by order of said U. S. circuit courts, consolidated under the style and title of James R. Jesup *at al. vs.* The Wabash, St. Louis and Pacific Railway Company *et al.*

That in said consolidated cause said Joy, as trustee under said mortgage of 1853, had filed a cross-bill to enforce the lien of the said mortgage and have the same foreclosed by a sale of the mortgaged premises; that said U. S. circuit courts were in the possession of the premises by their receiver, which had been continued since 1884, etc. On April 8th, 1889, the Farmers' Loan and Trust Company filed its answer, setting up the mortgage of 1853 made by the Toledo & Illinois Railway Company and a further mortgage executed by the Lake Erie, Wabash and St. Louis Railroad Company in June, 1856.

437 On the 29th April, 1889, James F. Joy, as trustee, filed a supplemental answer, setting up, amongst other things, the decree of the U. S. circuit courts in said consolidated causes, foreclosing all mortgages upon the property involved, directing a sale thereof on May 15th, 1889, and adjusting the priorities of all liens upon the same or the proceeds thereof. Said decree was passed March 23rd, 1889.

On October 16th, 1889, the plaintiff, by leave of court, filed its second supplemental and amended petition, setting forth that, under said decree of the U. S. courts in said consolidated causes, the properties in question had been sold and purchased by said purchasing committee, Hubbard, Ashley, Joy, and Wells, and that the sale had been confirmed; that said purchasing committee had conveyed said properties and franchises to a newly incorporated company, organized under the laws of Ohio, called "Wabash Railroad Company," and alleged that, by virtue of said foreclosure proceedings, decree, and sale, the said prior divisional mortgage of 1853 and 1858 to Joy and the Farmers' Loan and Trust Company, as trustees, had become extinguished and the liens thereof discharged, leaving the lien of said "equipment bonds" superior to the rights of said Wabash Railroad Company, which was made a defendant.

The cross-petitioners, Redmond and others, filed a similar amended cross-petition, making said Wabash Railroad Company a defendant and claiming the same rights and priority of lien as the plaintiff.

On December 18th, 1889, said Wabash Railroad Company filed its answer, setting out fully and in detail the proceedings under which it has acquired titles to the premises and claiming that the property in its hands was not subject to the lien of said equipment bonds.

In this stage of the pleadings and proceedings in the State

438 court James F. Joy as trustee and Solon Humphreys and Daniel A. Lindley as trustees under the mortgages of 1858 and 1879, made respectively by the Toledo and Wabash Railway Company and by the Wabash Railway Company, presented their petition to the U. S. circuit court for the northern district of Ohio,

western division, asking for a removal of said suit from the State court to said circuit court on the ground of prejudice and local influence, and of the refusal of the supreme court of Ohio in the Compton case to follow the adjudication of the Supreme Court of the United States in the Ham suit upon the question of the lien of said "equipment bonds" and in holding contrary thereto, which decision of the supreme court of Ohio, it was alleged, would be followed by all the other courts of the States to which the suit could be transferred. The petitions for removal alleged in the language of the acts of 1887 and 1888 that "from prejudice or local influence this defendant will not be able to obtain justice in said State court situated in the county of Lucas or in any other State court to which the said defendant may have a right to remove this cause on account of such prejudice of local influence," and were accompanied by the affidavits of the petitioners that they knew the contents thereof, and "that the same is true of his (their) own knowledge." The petitioners alleged the matter in controversy exceeded the sum of $2,000, interest and costs; that James F. Joy was at the commencement of the suit and still was a resident and citizen of Michigan; that Solon Humphreys and Daniel A. Lindley were at said date and still were citizens and residents respectively of the States of New Jersey and New York, and that the Adelbert College, the plaintiff in said suit, was at said date a corporation of Ohio;

proper bonds were tendered. On December 3rd, 1890, the
439 circuit court (Ricks, judge, presiding) made the following order in the premises:

"It appearing *from* the court from the petitions filed in this cause and the affidavits thereto attached that from prejudice or local influence Solon Humphreys, Daniel A. Lindley, and James F. Joy will not be able to obtain justice in the court of common pleas of Lucas county, Ohio, or in any other State court to which the said petitioners would or could under the laws of the State of Ohio have the right, on account of such prejudice or local influence, to remove this cause, and that they are therefore entitled to have the removal which they seek, it is accordingly ordered that this cause be, and the same is hereby, removed from the said court of common pleas of Lucas county to this court."

A transcript of the record was thereupon filed and the suit docketed in said circuit court.

In May, 1891, the plaintiff and cross-petitioners moved to have the cause remanded to the State court on the following grounds:

1st. That this court was without jurisdiction to hear and determine the cause.

2nd. Because the decree rendered by the supreme court of Ohio in the Compton suit and the refusal of said court to follow the previous adjudication of the Supreme Court of the United States in the Ham case on the same question did not in law constitute prejudice or local influence so as to prevent the said remaining defendants from being able to obtain justice in the State courts.

3rd. Because in fact there exists no such prejudice or local influence as alleged.

4th. Because cross-petitioners, Mary L. Olievra and Jane A. Sullivan, were aliens and not citizens of any State of the United States; that the executors of said Jane A. Sullivan, viz., Dr. W. P.
440 News and T. E. Stephens, are aliens and citizens of Great Britain and Ireland.

5th. Because James Walker, one of the cross-petitioners in the State suit, was at the time and ever since has been a citizen and resident of the State of Michigan, whereof James F. Joy was and still is a citizen and resident.

6th. Because plaintiff and cross-petitioner Israel M. Simon, another cross-petitioner, were and still are citizens of Ohio, and that the several defendant corporations are and were citizens of the same State.

7th. Because John W. Alling, another cross-petitioner, was at the time of filing said cross-petition and ever since has been a citizen and resident of the State of Connecticut, being the same State whereof the defendant Edgar T. Wells is a citizen and resident.

8th. Because William F. Redmond, Henry W. Smith, John S. A. Wittke, and Benjamin F. Ham, cross-petitioners, were at the time of filing their cross-petition, ever since have been, and still are citizens and residents of the State of New Jersey, being the same State whereof Solon Humphreys was and ever since has been a citizen and resident.

9th, 10th, 11th, & 12th. Because cross-petitioners Vassar Borthers Hospital; Preston Wing, since deceased, and Sheldon Wing and William H. Sheldon, his executors; Gustavus Rollins, survivor of Edward A. Rollins, late partners; Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman, and Elias Mead, executors of H. R. Mead, deceased; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorn, Edward Litchfield, James M. Ham; David Kohn, William M.
441 Kohn, & Edward Popper, partners under the style of Kohn, Popper & Co., were each of them at the time of filing said cross-petition or petitions, ever since have been, and still are citizens and residents of the State of New York, being the same State whereof Daniel A. Lindley, one of the removing parties, was at said date and still is a citizen and resident.

Affidavits denying the existence of prejudice or local influence and giving the citizenship of the several cross-petitioners, as stated, are filed in support of the motion to remand.

It having been made "to appear to this court" in December, 1890, that from prejudice or local influence the petitioners for removal could or would not be able to obtain justice in the State courts, and the order for removal of said suit having been then made, it would not be proper now to receive or consider counter-affidavits denying the existence of any such prejudice or local influence and thus raise an issue on the fact. The court, in the exercise of a legal discretion, having been satisfied with the "*prima facie*" showing made by the petitions for removal and accompanying affidavits, its actions in ordering the removal cannot be properly called in question or be set aside thereafter upon affidavits disputing the fact of the existence of

prejudice or local influence. There is no requirement in the statute that the opposing side shall have notice of the application to remove on that ground and be allowed an opportunity to be heard thereon. It would, perhaps, be the better practice to give the opposite party notice of the application to remove before action thereon by this court, but that is a matter resting in the discretion of the court and not a matter of right. It would, however, by a most anomalous proceeding to have an issue made up and tried as to the existence of prejudice or local influence after it had been made "to appear to this court" in a legal way that from prejudice or local influ-
442 ence the party applying for removal would not be able to obtain justice in the State court or courts and after the removal had been ordered.

The action of the court in ordering the removal in the present case is not in conflict with the rulings of the Supreme Court *In re* Pennsylvania Co., 137 U. S., p. 456, '7. Again, it does not appear that the action of the presiding judge in ordering the removal was vested or predicated to any extent upon and alleged refusal of the supreme court of Ohio to recognize or follow the adjudication of the Supreme Court of the United States in the Ham case. This conflict of opinion and decision between said courts on the question of the lien of said "equipment bonds" does not constitute the prejudice or local influence contemplated by the removal acts of Congress. The question passed upon by both courts was one of general commercial law, dependent for its proper solution upon the proper construction of the consolidating agreement under which the Toledo, Wabash and Western Railway Company was formed, and on that question courts of concurrent jurisdiction might reach different conclusions without subjecting either to any imputation of "prejudice or local influence." Such difference of opinions between the courts was certainly not the "prejudice or local influence" which the law contemplates as furnishing a ground or reason for removing a suit from one jurisdiction to another. Webster defines "prejudice" as follows: "An opinion or decision of mind formed without due examination; prejudgment; a bias or leaning toword one side or the other of a question from other considerations than those belonging to it; an unreasonable predilection or prepossession for or against anything especially; an opinion or leaning adverse to anything, formed without proper grounds or before suitable knowledge."

443 It is in this general sense that the removal acts use the word "prejudice," and it cannot properly be applied to the solemn judgment of the highest court of State on the mere ground that such judgment differs from that of the Supreme Court of the United States on the same question. The term "local influence," if not synonomous with "prejudice," manifestly refers to an improper influence exerted by or existing in favor of one side or against the other, which will prevent the latter from obtaining justice in the State courts. The "prejudice or local influence" which the law meant to make the grounds of removal may relate to the person of the litigant or the subject-matter or the litigation, but in either case there must exist improper bias, partiality, unreasonable predilection

or hostility in the local community or courts, which will work injustice or prevent the party seeking a removal from obtaining justice.

If in any case a State court's decision can be made the ground of removal, it must be alleged and shown that such decision proceeded, not from error or mistake of law, but from that improper bias or unreasonable predilection which constitutes the "prejudice or local influence" contemplated by the law. The petition for removal in the present case alleged no such improper bias in respect to the decision of the supreme court of Ohio in the Compton case, which it is said the State courts will follow. If the removal had been ordered on this branch of the petitions the action of the court would have been erroneous, and the second ground assigned for remanding the cause would have to be sustained. The general question presented by the other grounds in support of the motion to remand is whether the suit involved a controversy, within the intent and meaning of the act, between citizens of the State in which it was brought — a citizen or citizens of another State, so as to give
444 this court jurisdiction to hear and determine the same.

This question is not controlled by the fact that it has been made to appear to this court that from prejudice or local influence the removing parties could not obtain justice in the State court or courts or by the removal order based thereon. It involves the underlying inquiry whether under the pleadings and the citizenship of the parties there was any right of removal, even assuming the existence of prejudice or local influence. It is not questioned that the various cross-petitioners mentioned in the motion to remand are either aliens or citizens and residents of the same States with the removing defendants. If such cross-petitioners can be properly regarded as joint or coplaintiffs with the Adelbert College, or if it is proper to arrange them according to the real controversy without reference to the particular position they occupy in the pleadings (as the Supreme Court in the Removal Cases, 100 U. S., 469, and in Harter *vs.* Kernochen, 103 U. S., 566, said might be done to determine the right of removal), then defendants Joy, Humphreys, and Lindley were not entitled to remove the suit from the State court to this court, because under such rearrangement of the parties aliens and citizens of the same States with themselves would be placed in the attitude of plaintiffs. Under such circumstances no right of removal for prejudice or local influence existed under the 3rd subdivision of section 639, R. S., embodying the act of 1867, nor does it exist under the act of 1887, as amended in 1888. See Jefferson *vs.* Driver, 117 U. S., 272; Cambria Iron Co. *vs.* Ashburn, 118 U. S., 54; Hancock *vs.* Holbrook, 119 U. S., 586, and Young *vs.* Parker, 132 U. S., 267, construing subdivision 3 of section 639, Revised Statutes, and Thomas *et al. vs.* East Tenn., Va. & Ga. R'y Co., 38 Federal
445 Reporter, 673, construing the provisions of the present law.

In the latter case it was held that if there were one or more plaintiffs citizens of the same State with defendant or defendants the latter could not remove on the ground of prejudice or local influence under subdivision 3 of section 639 R. S. In order to remove a cause from the State court on the ground of prejudice it was essen-

tial, when there were several plaintiffs or several defendants, that all the necessary parties on one side should be citizens of the State where the suit was brought, and all on the other side citizens of another State or other States, and that all necessary parties on the side seeking a removal should join in the application. Under the present act "any defendant" may effect the removal provided the requisite diverse citizenship of the plaintiff or plaintiffs exists, as under the act of 1867. Treating the cross-petitioners as plaintiffs on one side of the controversy involved in the State suit and a portion of them being aliens and others citizens of the same States with Joy, Humphreys, and Lindley, the latter could not properly remove the suit so as to give this court jurisdiction to hear and determine the matter in dispute. This view is sustained by the recent decisions of Ch. J. Fuller in Wilder *et al. vs.* Va. T. & C. Steel and Iron Company *et al.*, 46 Fed. Rep't, 682, where it is said "any defendant being such citizen of another State may remove; but it is essential that a controversy should exist between such citizen of another State and citizens of the State in which the suit is brought." Assuming that a single defendant, being a citizen of a State other than that in which the suit is brought who is jointly sued with other defendants, citizens of the same State as the plaintiff, may remove the suit to the circuit court upon making it appear to the court that on account or prejudice or local influence he cannot
446 obtain justice in the State court or courts, still the question remains whether this can be done when the plaintiffs are not all citizens of the State in which the suit is brought, being all concerned adversely to the non-residents defendant who seeks to remove the cause. The language of the act of 1887 is that "when a suit is now pending or may be hereafter brought in any State court in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State any defendant being such citizen of another State may remove," etc. The language of the act of 1887 in describing the suit is the same; and as to the act of 1857, it has been uniformly held that all the persons on one side must be citizens of the State in which the suit is brought and all those on the other citizens of some other State. Young *vs.* Parker, 132 U. S., 267, and cases cited. Granted that the area of removability was enlarged by the act of 1887, inasmuch as any of the defendants may remove, still the rule under the act of 1867 applies, that "when the citizenship on the plaintiff's side of the suit is such as to prevent the removal under that act it is equally effective to defeat the right under the act of 1887." The decision of this court in Thomson *et al. vs.* East Tenn., Va. & Ga. R. R. Co., 38 Fed. Rep., 673, is in substansial accord with the foregoing construction of the act of 1887.

On behalf of said defendants it is urged that cross-petitioners are only defendants like themselves in the one suit between The Adelbert College as plaintiff on one side and all other parties as defendants within the rule applied in Fidelity Ins. Co. *vs.* Huntington, 117 U. S., 280, and Cambria Iron Co. *vs.* Ashburn, 118 U. S., 56, and that any defendant or defendants being a citizen or citizens of a State

or States other than that of said plaintiff has under the ex-
447 isting act the right to remove the suit upon satisfying this
court that from prejudice or local influence justice cannot be obtained in the State courts. Counsel for the removing defendants cite and rely upon the decision of this court in Whelan *vs.* Railroad Company, 35 Fed. Rep., 863. In that case there was a single plaintiff and two defendants, one a citizen of Ohio and the other a citizen of the State of Pennsylvania. The latter was allowed to remove the suit because of prejudice or local influence. There is no conflict between that case and the case of Thomson *vs.* The East Tenn., Va. & Ga. R. R. Co. *et al.*, 38 Fed. Rep., 673, for in the latter there was one or more plaintiffs who were not citizens of the State in which the suit was brought, but were citizens of the same State with the removing defendants, and this was held to defeat the right of the latter to remove.

The question then on this branch of the case is, how shall the cross-petitioners be regarded and placed? The plaintiff's original petition sought relief for itself alone. The 1st supplemental and amended petition sought relief for itself "concurrently and coequally" with James Compton, who was made a party defendant in 1888. The cross-petition filed by Redmond and others introduced new parties and changed the characters of the original suit in that it was made a general bill or proceeding on behalf of all holders of equipment bonds. As the State court permitted this, it may be assumed to be in accordance with the local law, though it violated the well-settled rule of chancery practice and pleading that a cross-bill should not introduce or make new parties. Shields *vs.* Barrow, 17 How., 145; Odem *vs.* Owen, 2 Baxter (Tenn.) Rep., 446, and McGarroch *vs.* Morrison, 3rd Tenn. Ch. Rep't, 355. But if not a proper cross-bill it was as to the new parties defendant and as to its
448 purpose an original bill or proceeding precisely the same matter of controversy involved in the plaintiff's petition. It is perfectly clear that the sole matter in dispute both under the original and cross petitions is the question of the lien of said "equipment bonds" upon the properties which were of the Toledo and Wabash Railway Company and to which defendants as corporations and trustees have succeeded as owners and holders of the title.

On one side of that controversy is the plaintiff and all cross-petitioners, and on the other side are all the defendants, corporations, the trustees under mortgages executed before and since the issuance of said equipment bonds, and the purchasing committee of the Wabash, St. Louis and Pacific Railway Company.

There is a single controversy, with many parties severally interested and jointly suing on one side and numerous defendants on the other. Under such circumstances the cross-petitioners, in seeking for themselves and all other holders of equipment bonds the same relief sought by plaintiff, should be regarded either as joint or coplaintiffs with the Adelbert College or as separate and independent plaintiffs in respect to defendants, against whom relief is sought. Occupying this position, there was no right of removal on the part

of Joy, Humphreys, and Lindley, trustees, for two reasons—1st, because all the parties plaintiff were not citizens of the State of Ohio, in which the suit was brought, and, 2nd, because several of the said plaintiffs were either aliens or citizens of the same States with the remaining defendants; and this court accordingly has no jurisdiction to hear and determine the controversy between the parties.

But for another and additional reason no jurisdiction has been acquired by this court. While the act of 1887 allows "any defendant" being a citizen of a State other than that in which the suit
449 is brought to remove, it is necessarily implied that such defendant is not a formal, but necessary party having an interest, personal or representative, in the litigation which may be injuriously affected by prejudice or local influence. The law gives no right of removal to parties having no such interest or whose interest has terminated. The existence of such qualifying interest and the jurisdiction of this court depends, therefore, on the case as it stands between the parties at the time the application for removal is made. Now, what interest had Joy, Humphreys, and Lindley as trustees under the mortgages of 1858 and 1879, or the bondholders secured thereby on Dec. 3, 1890, when the application for removal was made and acted upon? The pleadings show that under the foreclosure proceedings of the U. S. circuit courts for the proper districts of Ohio, Indiana, and Illinois in the consolidated cause of James R. Jesup *et al. vs.* The Wabash, St. Louis and Pacific R'y Co. the mortgages held by said trustees, as well as all underlying divisional mortgages, including that of 1853 to the Farmers' Loan and Trust Co, were foreclosed; that the properties covered by said several mortgages were under and in pursuance of the decrees of said circuit courts sold in May, 1889; that said sale was confirmed and the title thereto vested in and conveyed to the purchaser who conveyed the same to the newly organized Wabash Railroad Company. Assuming as we must that those proceedings were valid, all the representative rights and interests of said trustees, James F. Joy and Solon Humphreys and Daniel A. Lindley, who were before the court, and of the bondholders secured in and by the several mortgages to them, were thereby satisfied and extinguished, and the trustees created by the mortgages held by said removing defendants were fully executed.

450 The Wabash Railroad Company has under and by virtue of said foreclosure proceedings succeeded to all the title, rights, and interests of said trustees and of the bondholders whom they respectively represented, and said Wabash Railroad Company having been made a party defendant to the State suit and set up its title under said proceedings, whereby the controversy was shifted from the other defendants to itself before the application for removal was made.

The defendants Joy, Humphreys, and Lindlay as trustees had no such interest in the litigation as entitled *to* them to remove the suit. If the supreme court of Ohio should refuse to give proper effect to the title acquired by said Wabash Railway Company under said foreclosure proceedings it may sue out its writ of error to the

Supreme Court of the United States; but whether said company succeeds or fails in holding the rights and interests which said trustees Joy, Humphreys, and Lindley and the bondholders represented by them hold under their several mortgages, there is no recourse over against said trustees or bondholders such as would render them or either of them liable either to the plaintiffs and cross-petitioners or to said Wabash Railroad Company. From the time therefore that said Wabash Railroad Company succeeded to their rights and was made a party defendant to the State suit said trustees ceased to have any interest in the litigation, became merely formal parties, and had no right to remove the cause.

The conclusion of the court is that the suit must be remanded to the court of common pleas of Lucas county, Ohio, from whence it was removed, for want of jurisdiction in this court to hear and determine the controversy between the parties.

This judgment the removing defendants may no doubt
451 have reviewed by the supreme court under the fifth section of the act of 1891. The cause will be remanded and the removing parties be taxed with the costs connected with and incidental to the removing and remanding of the suit.

September 10, 1891.

HOWELL E. JACKSON,
*Circuit Judge.*

452 Afterwards, to wit, on the 10th day of November, A. D. 1891, there was duly entered on the journal of said court the following order finding that this court is without jurisdiction, &c., and remanding to common pleas court, to wit:

United States Circuit Court, Northern District of Ohio.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, Plaintiff,
*vs.*
THE TOLEDO, WABASH & WESTERN RAILROAD COMPANY and Others, Defendants.

This cause came on to be heard and was taken under advisement by the court on Tuesday, the second day of June, 1891, on the motions of the plaintiff and of the cross-petitioners, Mary L. Oliveira, James Walker, Israel M. Simon, John W. Allen, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin F. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman and Eliza Mead, as executors of H. R. Mead, and William C. Creamer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, and John B. Manning, Charles S. Webb, Edward H. Litchfield, James Ham, David Kohn, William M. Kohn, and Edward Popper, partners; also Dr. W. P. Rowe and T. S.

Stephens, executors of Jane A. Sullivan, deceased, and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, to remand this cause to the court of common pleas of
453 Lucas county for the reasons stated in said motion; also upon the affidavits of John C. F. Gardner and William F. Redmond, sworn to May 9th, 1891, and filed in this court with said motions.

And it further appearing to the court that at a stated term of this court on the 2nd day of December, 1890, James F. Joy, of the city of Detroit, State of Michigan, one of the defendants in this cause, presented his petition, verified April 23, 1890, and on the same day Solon Humphreys, of Bergen Point, in the State of New Jersey, and Daniel A. Lindley, of the city of New York, defendants in this suit, presented their petition verified on the 27th day of June, 1890, by said Humphreys and Lindley, and the affidavit of Solon Humphreys, filed with said petitions June 30th, 1890, said petitions praying for the removal of this cause, then pending in the court of common pleas of Lucas county, Ohio, to this court for hearing and determination, and upon the order of this court made upon said petition of said Joy, Humphreys, and Lindley on the third day of December, 1890, wherein it was found that, from prejudice or local influence, said Humphreys, Lindley, and Joy would not be able to obtain justice in the court of common pleas of Lucas county, Ohio, or any other State court to which they, said petitioners, would or could, under the laws of the State of Ohio, have the right, on account of such local prejudice or influence, to remove this cause, and that they were therefore entitled to have the removal which they sought, whereupon it was accordingly ordered that this cause be, and the same was thereby, removed from said court of common pleas of Lucas county to this court, and it was ordered that notice of this order be served upon said court of common pleas of Lucas county, Ohio, and that said court and clerk thereof be and the same shall be requested to furnish, upon application of the petitioners and the pay-
454 ment of the lawful fees therefor, a copy of the record on file in said court in this case to be filed in this court.

And it further appearing that on the 9th day of December, 1890, due service of said petitions, affidavit, and order of this court was made by the marshal of the United States for the northern district of Ohio by delivering a true and duly certified copy thereof to John P. Bronson, clerk of the court of common pleas of Lucas county, Ohio:

Now, the court, having sufficiently considered said motion, is of opinion and doth find that this court was without jurisdiction to entertain and grant the said petitions for removal, and that the said cause has been illegally removed from the court of common pleas of Lucas county, Ohio. Wherefore it is now—

Ordered that this cause be, and the same is hereby, remanded to the court of common pleas of Lucas county, Ohio, for further proceedings to be had therein by said court according to the course of procedure legally in use in the courts of the State of Ohio, and that the costs of this proceeding be paid by the said Joy, Humphreys,

and Lindley; otherwise that execution issue against them therefor, and that the costs of this proceeding, taxed at —, be paid by the said Joy, Hunphreys, and Lindley within ten days from the entry of this order, and in default thereof that execution issue therefor; to all of which the said Joy, Humphreys, and Lindley, by their solicitors, now herein appearing, except and at the same time and term, this being a cause in equity pending, pray an appeal to the Supreme Court of the United States; which appeal is allowed and ordered upon proceedings being taken for the completion thereof according to law and bond fixed at $1,000, conditioned according to law, with sureties to be approved by the clerk, said bonds to operate as a supersedeas.

455 And it being made to appear to the court that the record in the case is very voluminous and that the transcript thereof cannot be completed for the Supreme Court within the time prescribed by the rules of court, it is ordered that ninety days from and after November 10th, 1891, be, and the same is hereby, allowed appellants within which to have said transcript completed.

Approved November 10th, 1891.

HOWELL E. JACKSON,
*Circuit Judge.*

Afterwards, to wit, on the 10th day of November, A. D. 1891, there was filed in the clerk's office of said court the following certificate as to decree and order to remand, to wit:

United States of America, Northern District of Ohio, Western Division.

At the circuit court of the United States, begun and held at Toledo, for the western division of the northern district of Ohio, at the June term, 1891.

Present: Honorable Howell E. Jackson, circuit judge.

In the Circuit Court of the United States for the Northern District, Western Division.

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| THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY *vs.* THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY and Others. | In Chancery. |

456 This case was heard at the above-named term of said court on motion to remand said cause to the court of common pleas of Lucas county, Ohio, in which the suit was begun, herein filed by the said complainant, The Adelbert College of the Western Reserve University, and a similar motion filed by the cross-petitioning defendants, Mary L. Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin F. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a

corporation; Gustavus Rollins, survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters; George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners; also Dr. W. P. Rowe and T. E. Stephens, executors of Jane A. Sullivan, deceased, and Sheldon Wing and William A. Sheldon, executors of Presron Wing, deceased.

As shown by the record, the case was removed to this court from said court of common pleas by an order herein entered on the 3rd day of December, 1890, on application of the defendants James F. Joy, trustee; Solon Humphreys and Daniel A. Lindley, trustees, on the grounds set forth in their application and said order.

The case being argued by counsel at this term of court, it occurred as a question whether, assuming that the removing defendants from prejudice or local influence will not be able to obtain justice in said State court or in any other State court to which said removing defendants may have the right to remove said cause on account of said prejudice or local influence, as set forth in said applica-
457 tion and order, the citizenship of the parties to this suit is such as to warrant the court in retaining jurisdiction of the same.

And thereupon the court is of opinion that the citizenship of the various parties hereto, as shown by the record and affidavits filed herein, is such that this court has no jurisdiction of this suit, and on this ground alone the court grants said motions and orders said cause to be remanded to said court of common pleas of Lucas county.

Whereupon said removing defendants, James F. Joy, trustee, and Solon Humphreys and Daniel A. Lindley, trustees, having given notice of an appeal to the Supreme Court of the United States on said question of jurisdiction and the same having been allowed, said removing defendants made application to the court to make this certificate of said question for the purpose of said application pursuant to the statute in such case made and provided, which is accordingly done and certified under the supervision of the presiding judge and the seal of this court this 10th day of November, 1891.

Approved by—

HOWELL E. JACKSON,
*Circuit Judge.*

Afterwards, to wit, on the 10th day of November, A. D. 1891, there was filed in the clerk's office of said court the following appeal bond, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

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|---|---|
| ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY *vs.* THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY and Others. | In Chancery. |

458 UNITED STATES OF AMERICA:

Know all men by these presents that we, James F. Joy, trustee; Solon Humphreys and Daniel A. Lindley, trustees; C. L. Reynolds and F. J. Reynolds, are held and firmly bound, jointly and severally, unto the Adelbert College of the Western Reserve University, Mary L Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin F. Ham, E. Kellog Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters; George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward H. Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners; Dr. W. P. Rowe and T. E. Stephens, executors of Jane A. Sullivan, deceased, and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, plaintiff- and cross-petitioners in the above-entitled suit, as well as the other parties to said suit and each of them, said obligees *in solido*, in the sum of one thousand dollars, $1,000, lawful money of the United States of America, to be paid to the said obligees and to each of them, their successors, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, each by himself, and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 10th November, in the year of our Lord one thousand eight hundred and ninety-one.

459 Whereas the said James F. Joy, trustee, and Solon Humphreys and Daniel A. Lindley, trustees, having heretofore, to wit, on the 10th day of November, 1891, taken an appeal to the Supreme Court of the United States from and to reverse an order and decree rendered on the 10th day of November, 1891, by the circuit court of the United States for the northern district of Ohio, western division, in the suit above entitled of The Adelbert College of the Western Reserve University against The Toledo, Wabash & Western Railway Company and others, ordering and adjudging that the said cause should be remanded to the court of common pleas of Lucas county, Ohio, for the want of jurisdiction in the said circuit court of the United States to entertain the same:

Now, therefore, the condition of the above obligation is that if the above-named appellants shall prosecute their said appeal to

effect and shall answer all damages and costs if they shall fail to make good their appeal, then this obligation shall be void; otherwise to remain in full force, virtue, and effect.

SOLON HUMPHREYS. [SEAL.]
DANIEL A. LINDLEY. [SEAL.]
C. L. REYNOLDS.
F. J. REYNOLDS.

The above bond is approved this 10th day of November, A. D. 1891.

IRVIN BELFORD,
*Clerk U. S. Circuit Court, N. D. O.*

460 Afterwards, to wit, on the 10th day of November, A. D. 1891, there was filed in the clerk's office of said court the following assignment of errors, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY *vs.* THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY and Others. } In Chancery.

*Assignment of Errors.*

Now come the defendants, James F. Joy, trustee, and Solon Humphreys and Daniel A. Lindley, trustees, and say that there is manifest error to their prejudice in the record and proceedings in the above-entitled cause in this, to wit:

I.

That the said court erred in granting the motion to remand said cause to the court of common pleas of Lucas county, herein filed by said complainant.

II.

That the said court erred in granting the motion to remand said cause to said court of common pleas herein filed by said cross-petitioning defendants, Mary L. Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin M. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence
461 Morfit, Charles G. Peters; George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead; William

C. Creamer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn, and Edward Popper, partners; also Dr. W. P. Rowe and T. E. Stephens, executors of Jane A. Sullivan, deceased; and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased.

III.

That said court erred in ordering that said cause be remanded to said court of common pleas.

JAMES F. JOY, *Trustee*,
SOLON HUMPHREYS AND
DANIEL A. LINDLEY, *Trustees*,
By DILLON & SWAYNE,
OSBORN AND SMITH,
*Their Solicitors.*

Afterwards, to wit, on the 3rd day of December, A. D. 1891, there was duly entered on the journal of said court the following leave for defendant to file assignment of errors, &c., to wit:

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY
*vs.*
THE TOLEDO, WABASH & WESTERN RAILWAY COMPANY *et al.*
988. Chancery.

462 On application this day made by Solon Humphreys & Daniel A. Lindley, trustees, and James F. Joy, trustee, defendants herein, and for good cause shown, it is ordered that said defendants have leave to file an assignment of errors and certificate of court as to jurisdictional question for purposes of appeal to the Supreme Court of the United States *nunc pro tunc* as of November 10th, 1891, which was accordingly done.

463 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the above case as fully hereinbefore entitled as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto signed my name and affixed

Seal of the Circuit Court, Northern Dist. of Ohio.

the seal of the said court, at Toledo, in said district, this twenty-third day of January, A. D. 1892, and of the 116th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By HALLIE W. BROWN,
*Deputy Clerk.*

Endorsed on cover: Case No. 14,972. N. Ohio C. C. U. S. Term No., 1014. James F. Joy, trustee, & Solon Humphreys and Daniel A. Lindley, trustees, appellants, *vs.* The Adelbert College of the Western Reserve University *et al.* Filed February 6th, 1892.

141 215 355

Office Supreme Court U. S.
FILED.
NOV 28 1892
JAMES H. McKENNEY,
CLERK.

1

# Supreme Court of the United States,

JAMES F. JOY, Trustee, and SOLON HUMPHREYS and DANIEL A. LINDLEY, Trustees,
*Appellants,*

*vs.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, *et al.*
*Appellees.*

2

To Messrs JAMES F. JOY, Trustee, and SOLON HUMPHREYS and DANIEL A. LINDLEY, Trustees.

*Gentlemen.*—You are hereby notified that, on Monday, November 28th, 1892, at twelve c'clock noon, of said day, or as soon thereafter as the same can be heard, the appellees aforesaid, to wit: The Abelbert College of the Western Reserve University, Mary L. Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A. Wittke, Benjamin F. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L. Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation; Gustavus Rollins, a survivor of Edward A. Rollins, deceased, late partners; Henry F. James, Clarence Morfit, Charles G. Peters,

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George B. Mead, Walter M. Aikman, and Eliza Mead, as executors of H. R. Mead, William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, John B. Manning Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn and Edward Popper, partners, also Dr. W. P. Rowe and T. E. Stevens, executors of Jane A. Sullivan and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, and each and every one of the aforesaid, by the undersigned, their solicitors, upon the transcript of record filed and printed in this cause, will move the Court to dismiss the appeal herein for want of jurisdiction.

Dated, New York City, November 21, 1892.

GEO. HOADLY,
JOHN C. F. GARDNER,
Attorneys for Appellees.

Received copy of above notice.

RUSH TAGGART,
Attorney for Wabash Railroad Company, and James F. Joy.

HENRY CRAWFORD,
for Humphreys & Lindley.

SUPREME COURT OF THE UNITED STATES, 7

JAMES F. JOY, Trustee, and SOLON HUMPHREYS and DANIEL A. LINDLEY, Trustees,
*Appellants,*

*vs.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY, *et al.*,
*Appellees.*

No. 1014

8

Now come the Adelbert College of the Western Reserve University, Mary L. Oliveira, James Walker, Israel M. Simon, John W. Alling, William F. Redmond, Henry W. Smith, John S. A Wittke, Benjamin F. Ham, E. Kellogg Beach, Ella R. Johnson, Josephine L Cadmus, Irving R. Ferry, Vassar Brothers Hospital, a corporation ; Gustavus Rollins, a survivor of Edward A. Rollins, deceased, late partners ; Henry F. James, Clarence Morfit, Charles G. Peters, George B. Mead, Walter M. Aikman and Eliza Mead, as executors of H. R. Mead, William C. Cramer, Frederick K. Hubbard, Eugene E. Bishop, James Moir, Charles E. Thorne, 9
John B. Manning, Charles S. Webb, Edward Litchfield, James M. Ham, David Kohn, William M. Kohn and Edward Popper, partners, also Dr. W. P. Rowe and T. E. Stevens, executors of Jane A. Sullivan, deceased, and Sheldon Wing and William A. Sheldon, executors of Preston Wing, deceased, and each and every one of the aforesaid, by George Hoadly and John C. F. Gardner, their solicitors, and upon the transcript of Record filed in this cause on the 6th of February, 1892, and since

printed, move the Court to dismiss the appeal taken on the 10th of November, 1891 (Rec. fols. 283–284), to this Court in this cause by the said James F. Joy, trustee, and Solon Humphreys and Daniel A. Lindley, trustees, appellants, and they and each of them allege as the reason for granting this motion for dismissal of said appeal that this Court is without jurisdiction to hear and determine said appeal, because they say that said appeal was taken, as is shown by the said transcript of the record of said cause, from an order of the Circuit Court of the United States for the Sixth Circuit and Northern District of Ohio, Western Division, remanding said cause to the Court of Common Pleas of the County of Lucas, in the State of Ohio, to hear and determine the controversy between the parties, and awarding costs against said Joy, Humphreys and Lindley, because of said improper removal of said cause from said State to said Federal Court before the final ending and determination of the said cause in the said State Court, and not otherwise.

GEO. HOADLY,
JOHN C. F. GARDNER,
Solicitors for Appellees.

146 US 351

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JAMES H. McKENNEY,
CLERK.

# Supreme Court of the United States.

OCTOBER TERM, 1892.

JAMES F. JOY, Trustee, and SOLON HUMPHREYS and DANIEL A. LINDLEY, Trustees,
*Appellants,*

*vs.*

THE ADELBERT COLLEGE OF THE WESTERN RESERVE UNIVERSITY *et al.*,
*Appellees.*

No. 1014.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

## Brief for Appellees upon motion to dismiss appeal.

This suit was originally brought in the Court of Common Pleas, of Lucas County, Ohio, by the Adelbert College of the Western Reserve University against the Toledo, Wabash and Western Railroad Company, and others, defendants, and in it there were filed cross-petitions on behalf of the other appellees.

The cause being at issue, on the second day of December, 1890, James F. Joy, one of the defendants, filed his petition for removal of such cause to the Circuit Court of the United States for the Northern District of Ohio, upon the alleged ground that

"from prejudice or local influence this defendant will not be able to obtain justice in the said State Court situated in the County of Lucas, or in any other State Court in which the said defendant may have the right to remove said cause on account of such prejudice or local influence."

On the same day, December 2, 1890, Solon Humphreys and Daniel A. Lindley, the other two defendants in said cause, filed a like petition, praying similar relief for the same reason. (Rec. p. 4.)

Thereupon an order was made by the Circuit Court of the United States, directing the removal of the cause from the said Court of Common Pleas of Lucas County to the said Circuit Court of the United States (Rec. p. 10), and on the 21st day of January, 1891, the record of the said cause of the said Court of Common Pleas was filed in the said Circuit Court in obedience to the foregoing order. (Rec. pp. 11-256.)

On May 14th, 1891, the cross-petitioning defendants Mary L. Oliveira and others, filed their motion to remand the cause to the Court of Common Pleas, alleging thirteen grounds for such relief. (Rec. pp. 256–259.)

On the 29th day of May, 1891, the Adelbert College of the Western Reserve University, made a like motion for the same reasons. (Rec. pp. 265–267.)

The motions having been submitted upon briefs, a learned opinion was filed by the Hon. Howell E. Jackson, Circuit Judge, granting the same, which

is set out in the printed record (pp. 268–280), and on November 10th, 1891 (Rec. pp. 280–282), an order was entered in the Circuit Court of the United States, finding that that Court was without jurisdiction to entertain and grant the said petitions for removal, and that the cause had been illegally removed from the Court of Common Pleas of Lucas County, and it was accordingly remanded to that Court for further proceedings. (Rec. 281, 283.)

Joy, Humphreys and Lindley, by their solicitors, excepted, and prayed their appeal to this Court, which was allowed and ordered.

On the 10th day of November, 1891, there was filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of Ohio, Western Division, a certificate of the Circuit Judge, to the effect that

> " the Court is of opinion that the citizenship of the various parties hereto as shown by the record and affidavits filed herein is such that this Court has no jurisdiction of the cause, and on this ground alone the Court granted said motion and orders said cause to be remanded to the said Court of Common Pleas of Lucas County,"

whereupon said moving defendants having given notice of appeal on said question of jurisdiction, made application to the Court for this certificate, which was accordingly granted.

An assignment of errors was filed on the same day in the same Court (Rec. p. 285).

The record has been printed in anticipation of submission under the first paragraph of the 20th rule, but upon further consideration it seems to us proper to move to dismiss the appeal, and we have accordingly notified our learned adversaries of this motion.

Our understanding of the law is that this Court

has no jurisdiction to entertain appeals of this kind.

In *Richmond and Danville Railroad Company* vs. *Thouron*, 134 U. S. 45, and in *Gurnee* vs. *Patrick County*, 137 do. 141, this Court held that appeals in cases like this could not be sustained under the Act of 1889. The same conclusion has been reached by this Court in cases appealed under the Act of 1891.

*McLish* vs. *Roff*, 141 U. S., 661.
*Chicago, St. Paul, Minneapolis & Omaha Railroad Co.* vs. *Roberts*, 141 U. S. 690.

For these reasons we insist that this cause has been improperly appealed, and that the appeal should be dismissed.

Respectfully submitted,

GEO. HOADLY,
JOHN C. F GARDNER,
Solicitors for Appellees.